TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 143

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 15, 1937
CERTIORARI GRANTED OCTOBER 11, 1937

SUPREME COURT OF THE UNITED STATES

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1 [Caption omitted.]

In United States District Court, District of Massachusetts

No. 4313, In Equity

UNITED STATES OF AMERICA, PETITIONER,

v.

CHELSEA TRUST COMPANY, A BANKING CORPORATION ORGANIZED BY LAW AND HAVING AN USUAL PLACE OF BUSINESS IN CHELSEA, IN THE DISTRICT OF MASSACHUSETTS, AND HELEN J. STEVENS, A
2 CITIZEN OF BOSTON AND SAID DISTRICT OF MASSACHUSETTS, AS SHE IS ADMINISTRATRIX OF THE ESTATE OF THOMAS MCGOVERN, DECEASED, AND HELEN J. STEVENS AND CATHERINE E. MCGOVERN, BOTH CITIZENS OF SAID BOSTON, AND LENA F. DONOVAN, A CITIZEN OF NEW HAVEN IN THE DISTRICT OF CONNECTICUT, AND ROBERT E. MCGOVERN, A CITIZEN OF GARDNER, AND SAID DISTRICT OF MASSACHUSETTS, AND AN INSANE PERSON NOW CONFINED TO THE STATE COLONY IN THE CITY OF GARDNER, IN THE SAID DISTRICT OF MASSACHUSETTS

Bill of complaint

Filed April 10, 1936

To the Honorable the Judge of the District Court of the United States for the District of Massachusetts sitting in equity:

Now comes the United States of America, your petitioner, and respectfully represents as follows:

1. The said respondent, Chelsea Trust Company, is a banking corporation duly organized and existing under the laws of the State of Massachusetts, and authorized by law to carry on the business of a bank in the said District of Massachusetts.

2. The said respondent, Helen J. Stevens, is the duly appointed administratrix of the estate of one, Thomas McGovern, deceased, acting under an appointment made on or about February 27, 1936, by the Suffolk County Probate Court, located in the said District of Massachusetts.

3. The said respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern are citizens of Massachusetts claiming to be the heirs-at-law and next of kin of the said Thomas McGovern, deceased.

4. The said Thomas McGovern hereinafter referred to as the "veteran" enlisted in the military service of the petitioner, United States of America on or about February 15, 1877, and was honorably discharged on February 14, 1882, after serving in the Light Battery "B" 4th Regiment of Artillery.

5. The said veteran on or about November 11, 1925, was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, located at Hampton, in the State of Virginia,
3 hereinafter referred to as the "Home", and which is now known as the Veterans' Facility, Veterans' Home, Virginia.

6. The said admission into the said "Home" was made upon the sworn application of the said veteran, dated April 17, 1925, and in accordance with the Act of June 25, 1910 (36 Stat. 736; Title 24, Section 136, United States Code), and in which application the veteran stated he was married, had four children, and "nearest relatives none."

7. At the time of said application for admission to said "Home," the said veteran for and in consideration of said acceptance of his application and admittance agreed to the following:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

8. The said veteran died while a member of and at the said Home on February 17, 1928, at which time there was found among his effects a certain bank book #1295 in the name of, and the personal property of the said veteran, showing deposits in the savings
4 department of the respondent, Chelsea Trust Company, of three thousand eight hundred and forty-one dollars and ten cents ($3,841.10).

9. That the said deposits and proceeds thereof in the said respondent bank were personal property of the said veteran and upon his death vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers.

10. That the said personal property, deposits, and proceeds thereof, of said veteran were not reclaimed by any of the respondents or by any legatee or person entitled to take the same by inheritance at any time within five years after the death of said veteran.

11. That the said deposits and proceeds thereof have become a part of the "Post Fund" of said Home, the title to which was transferred to the United States of America under the Act of Congress of July 3, 1930.

12. That your petitioner, United States of America, is the owner of and entitled to the said bank deposits and the proceeds thereof in the respondent Chelsea Trust Company.

13. That your petitioner has requested the respondent bank to transfer and place in the name of your petitioner the said bank book, deposits, and accumulations thereof, which it has refused to do and still refuses to do, as the said sums are being claimed by the respondent administratrix and the respondent and claimed heirs at law of the veteran, and the said bank book, deposits, and accumulations thereof are charged with a trust in the hands of the respondent bank in favor of your petitioner.

14. That your petitioner has no complete and adequate remedy at law.

15. That irreparable loss or damage will result to your petitioner unless some immediate action is taken by this Court.

Wherefore your petitioner prays

1. That the Court find and hold that the sums of $3,841.10 deposited by the veteran Thomas McGovern in the respondent Chelsea Trust Company and contained in book #1295 of said bank, together with all accumulations thereof, is the personal property of the said veteran, and that the petitioner is the lawful owner thereof.

2. That the respondent Chelsea Trust Company be forthwith restrained and enjoined from transferring, assigning, delivering, or disposing of any of the aforesaid deposits and accumulations thereof until the further order of this Court.

3. That the respondent bank may be declared to be a trustee of said deposits of $3,841.10 and accumulations thereof, for the benefit of your petitioner, and that the said respondent bank be ordered and decreed forthwith to pay over said sum to your petitioner.

4. That the respondent Chelsea Trust Company be ordered to transfer and deliver the said deposits and accumulations thereof to your petitioner and to do any and all acts necessary to place the said bank book and deposits and accumulations thereof in the name of your petitioner.

5. That all respondents other than the respondent bank and each of them be forthwith restrained and enjoined from selling, transferring, assigning, encumbering or purporting to transfer, assign or encumber in any manner whatsoever any of the money, deposits or accumulations referred to herein or any right, title or interest in any of said sums until the final order of this Court.

6. And for such further relief as may seem proper to this Honorable Court and as justice may require.

UNITED STATES OF AMERICA.
by FRANCIS J. W. FORD,
United States Attorney,
by Frank W. Tomasello,
FRANK W. TOMASELLO,
Assistant United States Attorney.

6 [*Duly sworn to by Frank W. Tomasello, jurat omitted in printing.*]

In United States District Court

Answer of the Chelsea Trust Company.

Filed April 28, 1936

To the Honorable the Judge of the District Court of the United States for the District of Massachusetts sitting in equity:

And now comes the Chelsea Trust Company and makes answer to the bill of complaint as follows:

1. The Chelsea Trust admits the allegations contained in paragraph one of the bill of complaint.

2. The respondent has no knowledge concerning the allegations contained in paragraph two of the bill of complaint and neither admits nor denies the same but calls upon the petitioner to prove the same.

7 3. The respondent has no knowledge concerning the allegations contained in paragraph three of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

4. The respondent has no knowledge concerning the allegations contained in paragraph four of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

5. The respondent has no knowledge concerning the allegations contained in paragraph five of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

6. The respondent has no knowledge concerning the allegations contained in paragraph six of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

7. The respondent has no knowledge concerning the allegations contained in paragraph seven of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

8. The respondent has no knowledge concerning the allegations contained in paragraph eight of the bill of complaint and neither admits nor denies the same and calls upon the petitioner to prove the same; and further says that at the time of the service of the subpoena in this action upon it, it had credited and belonging to one Thomas McGovern the sum of five thousand eight hundred and twenty-four dollars and thirty-seven cents ($5,824.37), but whether or not the said Thomas McGovern is the one and same person named in the bill of complaint or not it is unable to determine.

9. The respondent has no knowledge of the allegations contained in paragraph nine of the bill of complaint and neither admits nor denies the same and calls upon the petitioner to prove the same,
8 and says that whether or not the veteran mentioned in the bill of complaint and the said Thomas McGovern the holder of deposit book #1295 are one and the same person it is unable to determine.

10. The respondent has no knowledge of the allegations contained in paragraph ten of the bill of complaint and neither denies nor admits the same and calls upon the petitioner to prove the same.

11. The respondent has no knowledge of the allegations contained in paragraph eleven of the bill of complaint and neither admits nor denies the same.

12. The respondent makes no answer to paragraph twelve of the bill of complaint as it is a conclusion of law.

13. The respondent admits that the petitioner has requested that it transfer the deposit above mentioned to the petitioner and admits that it refused to do so because the deposit book has never been presented to it and it has no way of knowing whether or not the veteran mentioned in the bill of complaint and the owner of the deposit book are or were one and the same person.

14. The respondent has no knowledge of the allegations contained in paragraph fourteen of the bill of complaint and neither admits nor denies the same.

15. The respondent says that it has notice of a bill in equity brought by Helen J. Stevens, of Boston, in the County of Suffolk, as she is administratrix of the estate of Thomas McGovern, also called Thomas McGoveran, late of Chelsea, against the Chelsea Trust Company and that a citation has issued from the Probate Court for the County of Suffolk on said petition, and that said bill in equity prays that the ownership of said bank deposits be determined and that the Chelsea Trust Company be restrained from paying the said deposits.

16. And the Chelsea Trust Company says that it should not be made to answer the bill of complaint filed in the Probate Court and also this bill of complaint; and that since the said
9 Helen J. Stevens, administratrix, has submitted to the jurisdiction of this Honorable Court, she should be ordered to dismiss her bill in equity in the Probate Court.

17. And further answering the respondent says that it is merely a stakeholder in this controversy and asks that it be allowed to pay the said deposit into Court, and that it be allowed its costs and reasonable counsel fee from the funds held by it, and that these proceedings be dismissed as to it.

By its Attorney,

LOUIS R. KIERNAN.

In United States District Court

Answer of Helen J. Stevens as she is administratrix of the Estate of Thomas McGovern, a respondent

Filed April 30, 1936

Now comes Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, deceased, a respondent in the above entitled case, and for answer says:

1. She admits the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

2. She admits the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. She admits all the allegations contained in paragraphs 4, 5, 6 and 7 of said Bill of Complaint.

4. She admits the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. She admits so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent bank were the personal property of the said veteran. She denies that any of said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; and further answering she says that on the death of said McGovern said personal property became part of his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent; and further answering this respondent says that as such administratrix it is her duty to administer in behalf of creditors as well as beneficiaries or distributees.

6. This respondent admits the allegations contained in paragraph 10 of the Bill of Complaint; and further answering says that the reason no heir or next of kin, or administrator of the estate of Thomas McGovern, claimed the personal property now in question within the five year period stated, was because they had no knowledge of the death of said Thomas McGovern until after said five years had run; and further answering this respondent says that if the contract above-mentioned is valid, the petitioner and its predecessor were trustees for the benefit of the heirs or next of kin of said Thomas McGovern, and as such trustees it was their duty to bring to the knowledge of said persons the death of their parent so that proper legal steps could be taken for the acquisition of the said deposits by the persons legally entitled thereto; and further answering this

respondent says that the petitioner or its predecessor either intentionally or negligently prevented any knowledge of the death of Thomas McGovern reaching his widow and children within the period of said five years, so that they never had any opportunity to make a claim for said property.

11 7. This respondent denies all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint; and further answering says that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering, this respondent says the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, this respondent says that she has demanded from the petitioner and the respondent bank the personal property of her intestate which is in their hands or control; and further answering, this respondent prays that this Court will direct the respondent bank, and the Veterans Facility, a department of the United States Government, to pay over and deliver to her as she is administratrix of the estate of Thomas McGovern, all personal estate of said decedent in their hands, so that said property may be administered according to law.

HELEN J. STEVENS,
Administratrix as aforesaid.
By JAMES E. CARROLL.

In United States District Court

Answer of Helen J. Stevens, Catherine E. McGovern, and Lena F. Donovan, respondents

Filed April 30, 1936

Now come Helen J. Stevens, Catherine E. McGovern, and Lena F. Donovan, three of the respondents in the above entitled case, and for answer say:

1. They admit the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

12 2. They admit the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. They admit all the allegations contained in paragraphs 4, 5, 6, and 7 of said Bill of Complaint.

4. They admit the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. They admit so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent Bank were the personal property of the said veteran. They deny that said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; and further answering say that on the death of the said McGovern said personal property became part of his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent.

6. These respondents admit the allegations contained in paragraph 10 of the Bill of Complaint, and further answering say that the Board of Managers of the National Home for Disabled Volunteer Soldiers and its successor either intentionally or negligently prevented any knowledge of the death of the father of these respondents reaching them within the period of said five years, so that they never had an opportunity to make any claim for the property in the hands or control of said Home; and further answering, these respondents say that if the contract above-mentioned gave any rights to the petitioner it made the petitioner and its predecessor trustees of the property owned by the decedent at the time of his
13 death and if said contract is a valid contract, the petitioner and its predecessor were trustees for your respondents, and as such trustees it was their duty to inform your respondents of the death of their parents so that they might present their claim as an heir or next of kin; and that the limitation in the Statute did not run against your respondents until the trust had been repudiated and such repudiation brought to their knowledge.

7. These respondents deny all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint, and further answering, say that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering these respondents say the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, these respondents pray that this Court will direct the respondent Bank, and the Veterans Facility, a department of the United States Government, to pay over and deliver to the respondent Helen J. Stevens, as she is administratrix of the estate of Thomas McGovern, the person entitled to all the personal estate of said decedent, all personal property in their hands which was the property of Thomas McGov-

ern at the time of his death, to wit: September 17, 1928, so that said property may be administered according to law.

HELEN J. STEVENS
CATHERINE E. McGOVERN
LENA F. DONOVAN
by JAMES E. CARROLL,
Their Attorney.

14 In United States District Court

Answer of Robert E. McGovern, an insane person, a respondent, by his guardian James E. Carroll

Filed April 30, 1936

Now comes James E. Carroll as he is guardian of Robert E. McGovern, an insane person, and states that on February 27, 1936, he was appointed guardian of said Robert E. McGovern, an insane person, by the Probate Court in and for the County of Suffolk and Commonwealth of Massachusetts, and as said guardian he answers to the petition in the above entitled case for his ward.

1. The respondent by his guardian admits the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

2. The respondent by his guardian admits the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. The respondent by his guardian admits all the allegations contained in paragraphs 4, 5, 6, and 7 of said Bill of Complaint.

4. The respondent by his guardian admits the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. The respondent by his guardian admits so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent bank were the personal property of the said veteran; this respondent by his guardian denies that said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; aid further answering says that on the death of the said McGovern said personal property became part of
15 his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent.

6. This respondent by his guardian admits the allegations contained in paragraph 10 of the Bill of Complaint; and further answer-

ing says this respondent was not mentally capable of making any claim as an heir or next of kin of his father Thomas McGovern during the five years mentioned; that since May 24, 1918, this respondent has been an insane person committed by the Courts of the Commonwealth of Massachusetts; that on September 17, 1928, the date of death of his father, this respondent was an insane person and an inmate of the Gardner State Hospital, Gardner, Massachusetts, where he is now located; and further answering this respondent by his guardian says that if said contract above-mentioned is a valid one the said petitioner and its predecessor were trustees for him and had a duty as said trustee to bring to him in a legal manner knowledge of the fact that he had a claim; and further answering this respondent by his guardian says that the petitioner or its predecessor either intentionally or negligently prevented any knowledge of the death of said Thomas McGovern reaching any person in behalf of said respondent within the period of five years so that the respondent or any legal person entitled to represent him had no opportunity to make a claim for said property during said period; and further answering your respondent by his guardian says that because of the disability of the respondent the five-year period could not run legally against any claim which said respondent had in respect to the personal property in question.

7. This respondent by his guardian denies all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint, and further answering, says that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the
16 death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering, this respondent by his guardian says the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, this respondent by his guardian prays that this Court will direct the respondent bank and the Veterans Facility, a department of the United States Government, to pay over and deliver to the respondent Helen J. Stevens, as she is administratrix of the estate of Thomas McGovern, the person entitled to all the personal estate of said decedent, all personal property in their hands which was the property of Thomas McGovern at the time of his death, to wit: September 17, 1928, so that said property may be administered according to law.

ROBERT E. MCGOVERN.
By his guardian, JAMES E. CARROLL.

In United States District Court

Agreed statement of facts

Filed May 1, 1936

Now come the parties by their respective counsel and agree upon the facts as hereinafter stated, with the understanding that the parties reserve the right to object to the materiality of any of them, and may offer other material evidence not inconsistent with such facts.

One Thomas McGovern, sometimes known as Thomas McGoveran, enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, said McGovern was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in
17 the State of Virginia, which place is hereinafter referred to as the "Home." Attached hereto and made a part hereof marked "A" is a copy of his application for admission to the Home. In his application for admission to the Home McGovern stated he was married and had four children. In becoming a member of the Home he submitted himself to the provisions of the Act of June 25, 1910, known as 36 Stat. 736 entitled 24 sec. 136, U. S. Code, and in accordance with the provisions of that Statute said McGovern agreed with the Home as follows:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

Said McGovern died September 17, 1928, while a member and while residing at said Home which was about two years and ten months after his entrance into said Home.

At the time of his death his wife Anne J. McGovern, was living in Boston, Massachusetts, with her daughter the respondent Helen J.

Stevens; that a daughter Catherine E. McGovern, a respondent, was also living in Boston; that another daughter Lena F. Donovan,
18 also a respondent, was living in New Haven, Connecticut, and a son Robert E. McGovern, a respondent, was an insane person and an inmate of the State Hospital at Gardner, Massachusetts, having been committed as an insane person in the year 1918 by a Massachusetts court; that the said widow and children named above were the heirs-at-law and next of kin of said McGovern at the date of his death;

That no knowledge of said McGovern's death had reached these persons at any time in the period which constituted five years after September 17, 1928;

At the time of his admission to said Home said McGovern was a resident of the City of Chelsea, Suffolk County, Massachusetts, where he had resided since 1889, and which City was his legal domicile at the time of his death; that since the year 1904 the said McGovern had not lived with his wife or the respondent daughters who had no knowledge of his whereabouts in the last twenty years of his life; that the respondent son Robert E. McGovern lived with his father in said Chelsea up to the time he was committed as an insane person in 1918; that the first knowledge of the death of the said decedent received by any of the respondents was in a letter from the said Home dated October 19, 1935, addressed to the respondent Stevens;

That after the death of said McGovern no attempt was ever made by any official or any one in behalf of said Home to locate the said wife and said four children of said McGovern;

That at the time of McGovern's death the following personal property constituted his estate:

Cash on person	$5.62
Deposit at the Home	126.00
Personal Effects	2.50
A savings bank in the Chelsea Trust Company, Chelsea, Massachusetts, Account No. 1295, showing a balance as of Jule 3, 1925, of	3,841.10
19 A savings bank book in the Boston Five Cents Savings Bank, Boston, Mass., Account No. 701,775, showing a balance as of October 15, 1925	1,980.10

That neither of the said savings accounts was the proceeds of a Government pension or any other kind of gratuity from the Government, but was said McGovern's own personal estate;

That Anne J. McGovern, the wife of said Thomas McGovern, died March 4, 1933, a resident of said Boston, and that Helen J. Stevens has been duly appointed administratrix of her estate;

That said Helen J. Stevens is the duly appointed administratrix of the estate of said Thomas McGovern;

That James E. Carroll, of Boston, is the duly appointed guardian of Robert E. McGovern, an insane person.

FRANK W. TOMASELLO,
Assistant U. S. Attorney for Mass. District.
JAMES E. CARROLL.
Attorney for Helen J. Stevens, Administratrix, estate of Thomas McGovern, and in her individual capacity, Catherine E. McGovern, Robert E. McGovern, Lena F. Donovan, Respondents.

20 "A"

(Form No. 1)

(See "Explanations and Directions" on Third Page)

Application for Original Admission to the National Home for Disabled Volunteer Soldiers. Headquarters Office, National Military Home, Ohio. Branch Homes and P. O. Addresses: (Omitted)

COUNTY OF SUFFOLK,
State of Mass., ss:

On this 17th day of April, A. D. 1925, personally appeared before me (1) Thomas McGovern within and for the County and State aforesaid (2), aged 75 years; height 5-7 feet; complexion Ruddy; a resident of (3) Chelsea, County of Suffolk, State of Mass.; who being duly sworn, deposes and says, that he was born in (4) Ireland; that he is by occupation a (5) watchman; that he is (6) married; that he has (7) 4 children living; and that the name and address of his wife, or nearest relatives, is (8) unknown, and that he served in the armed forces of the United States 5 yrs. Regular times during the (9) No. war, and was honorably discharged from each service, as follows:

Service	Date of entry into service, and rank	Where	Company and regiment, or other organization	Date and place of discharge, and rank	Cause of discharge
1st. 2d. 3d. 4th.	Feb. 15, 1877 Private	Boston	B, 4th U. S. Arty	Newport, R. I. Feb. 14, 1882 Private	End of service Expiration

That he is receiving No Dollars per month (10)—on Certificate No. —, and being unable on account of his disability to earn his living, desires admission to the National Home for Disabled
21 Volunteer Soldiers. That he has never been a member of any Branch of the National Home, and was never dishonorably discharged from any State Home for Disabled Volunteer Soldiers and Sailors.

Explanations and Directions

(Memorandum: Page 2 of Exhibit "A" is omitted, as the items enumerated are left blank and are immaterial. James S. Allen, Clerk.)

The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the Home.

(11) THOS. McGOVERN.
(Address) *110 Beacon St., Chelsea, Mass.*

Witness:
D. H. SULLIVAN.

Sworn to and subscribed before me the day and year first above written, and I hereby certify that the foregoing affidavit was read and fully explained to Thomas McGovern before he executed it.

[SEAL] DANIEL H. SULLIVAN,
Notary Public.

22 Surgeon's Certificate

I have carefully examined the above named applicant, and certify that he is (12) permanently temporarily incapacitated for earning his living, as a result of the following disabilities (13), viz: Rheumatism; Valvular Disease of Heart; Weak leg muscles; Hemorrhoids.

Mental condition of applicant Good.

Necessity for medical treatment, services of an attendant, etc., only as above.

B. VAN MAGUESS,
Surgeon, Chelsea, Mass.

(To be filled in at Branch.)

Eyes blue. Hair f Red. Religion Cath. Read and Write Yes.

(Endorsed:) Register No. — War Regular Army. Application for Original Admission to the National Home for Disabled Volunteer Soldiers of Thomas McGovern, B Co. 4th Reg't. U. S.

Arty. National Military Home, Ohio, Apr. 24, 1925, 1925. Approved for admission (Name undecipherable). Asst. Gen'l. Treasurer, National Home for D. V. S. Admitted to Southern Branch ------, 19--, -------.

23 *Recital as to hearing*

On the said 1st day of May 1936 said cause comes on to be heard on the pleadings and agreed statement of facts, the Honorable Elisha H. Brewster, District Judge, sitting, and on the 26th day of said May, an opinion of the court is announced, ordering a decree to be entered for the United States.

In United States District Court

Final decree

June 5, 1936

June 5, 1936. E. H. B., D. J.

BREWSTER, J.: This cause came on to be heard at this term of the court and upon pleadings and proofs presented by the parties, and thereupon, upon consideration thereof, it is,

Ordered, Adjudged, and Decreed as follows:

1. That the respondent, Chelsea Trust Company, pay over to the United States of America through its representative, Thomas Quinn, General Counsel of the Veterans' Bureau for the District of Massachusetts, the full amount represented by the deposit account together with all accumulations thereon standing in the name of Thomas McGovern, sometimes known as Thomas McGoveran, the deceased veteran named in the bill of complaint, less taxable costs and the attorney's fee of twenty-five dollars ($25.00).

2. That the respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern are perpetually restrained and enjoined from transferring, encumbering, or in any way asserting any claim in and to said deposits in the Chelsea Trust Company, together with all accumulations thereon.

By the Court,

JAMES S. ALLEN, *Clerk.*

24 *Recital as to appeal*

From the foregoing final decree, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern, by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, respondents, claimed an appeal on August 31, 1936, to the U. S. Circuit Court of Appeals for the First Circuit, and an affidavit of poverty having been filed, said appeal is allowed.

In United States District Court

No. 4313 Equity

UNITED STATES OF AMERICA

v.

CHELSEA TRUST COMPANY ET AL.

No. 4314 Equity

UNITED STATES OF AMERICA

v.

BOSTON FIVE CENTS SAVINGS BANK ET AL.

Opinion

May 26, 1936

BREWSTER, J.: The above entitled suits are brought to reach bank deposits standing in the name of one Thomas McGovern, sometimes known as Thomas McGoveran. Both suits may be conveniently disposed of in one opinion.

STATEMENT OF FACTS

On November 11, 1925, McGovern, an honorably discharged soldier, was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, at Hampton, Virginia. His admission was subject to the Act of June 25, 1910 (Title 24, U. S. C. A. 136), and in his application he agreed as follows:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; * * *"

McGovern died September 17, 1928, while still a member of the Home. He was survived by a wife and four children, one of whom was a son who had been declared insane in 1918.

Since 1904 McGovern had not lived with his family, and for the last twelve years of his life his wife and children had no knowledge of his whereabouts. None of the heirs or next of kin had knowledge

of McGovern's death prior to October 19, 1935. No one on behalf of the National Home made any attempt to locate McGovern's wife or children. In his application, McGovern had stated that he did not know their address.

At the time of his death McGovern had a deposit in the Chelsea Trust Company, respondent in Equity No. 4313, which on July 3, 1925 amounted to $3,841.10, represented by account No. 1295. He also had a deposit in the Boston Five Cents Savings Bank, respondent in Equity No. 4314, which on October 15, 1925 amounted to $1,980.10, represented by account No. 701,775.

Conclusions of law

The United States asserts claim to these deposits under the provision of the above cited Act of 1910, the pertinent provisions of which are:

"SEC. 136. Disposition of Personal Property of Deceased Members. The application of any person for membership in the
26 National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, * * * shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, * * * and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. * * *."

The issue presented necessitates a construction of this statute. On behalf of the respondent heirs, it is urged that the five-year limitation upon their right to claim the personal property of a deceased member does not apply unless the deceased left no heirs at law or next of kin. I do not so read the statute. I hold it to mean that if a member dies, leaving no heirs at law or next of kin the title to personal property passes absolutely to the home; but if he dies leaving a will, or heirs, the property vests in the home subject to the right of the legatee or any person entitled by inheritance to lay claim to the property, if claimed within five years. This construction reconciles and gives effect to all provisions of the Act. It is a familiar canon of construction, requiring no citation, that a statute should be so construed. In the circumstances of this case it is my opinion that the rights of the United States to these funds are not affected by the fact that the son of the deceased soldier was legally incompetent.

Each of the respondent banks, in its answer, has asked for costs including reasonable counsel fees, and I grant this prayer.

The United States is entitled to a decree ordering each of the respondent banks to pay over to a representative of the government authorized to receive same, and designated in the decree,
27 the full amount represented by the respective deposit accounts above noted, less taxable costs and the attorney's fee of $25.00; and perpetually restraining and enjoining the other respondents from transferring, encumbering or in any way asserting any claim in and to said deposits, together with all accumulations thereon.

In United States District Court

Assignment of errors

Filed August 31, 1936

The respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, and Helen J. Stevens as she is administratrix of the estate of Anne J. McGovern, in this action in connection with their petition for appeal make the following assignment of errors which they aver occurred in the trial of this case in said District Court and in the rendition of judgment against the defendant appearing on record herein:

1. The Court erred in its conclusion of law construing the following statute:

Title 24 U. S. C. A. 136

"SEC. 136. Disposition of Personal Property of Deceased Members. The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, * * * shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, * * * and that all personal property of said applicant shall, upon his death,
28 while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. * * *"

by deciding that if a member dies leaving no heirs at law or next of kin the title to personal property passes absolutely to the Home; and in deciding that when a member dies leaving a will or heirs the property vests in the Home subject to the rights of the legatee or any person entitled by inheritance to lay claim to the property if

claimed within five (5) years; and in deciding that under the circumstances of this case the rights of the petitioner, the United States, to the fund is not affected by the fact that the son of the deceased soldier, to wit, the respondent Robert E. McGovern (an insane person) was legally incompetent.

Your respondents aver that these conclusions of law are erroneous in as much as no property could vest in the United States so long as the deceased soldier was survived by a widow and four children, his heirs at law and next of kin; that at best the statute gave the United States of America a claim as a creditor against the estate of the deceased soldier to be perfected by the creditor through orderly probate proceedings; that the title of the United States to the property could never be perfected until it had been established that the deceased soldier left no heirs; that the five-year statute for claimants runs only against those persons who are remotely connected with the deceased soldier and claiming to be heirs, as every person leaves heirs but every person's heirs cannot be ascertained, mostly because of remoteness.

Your respondents aver that no statute of limitations can run against a person under disability; that at the time of the death of the deceased soldier his son, the respondent Robert E. McGovern, was an insane person and continues as such up to the present day,
and at no time had any opportunity to assert his claim as an
29 heir, nor had his mother or his sisters knowledge of the death
of his father to assert the claim in his behalf within the time specified by the statute.

Your respondents further aver that the Court erred in its conclusions of law because the said statute is unconstitutional in that it deprives persons of their property without due process of law.

2. The Court erred in ordering a decree in favor of the petitioner, the United States of America, and in directing the respondent bank, the Chelsea Trust Company, to pay over to the Government the full amount represented by the deposit in said bank involved in this case, less taxable costs and attorney's fees.

Wherefore, the respondents Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, and Helen J. Stevens as she is administratrix of the estate of Anne J. McGovern, pray that the decree in said cause be reversed and the cause remanded with instructions to the Trial Court as to further proceedings therein, and for such other and further relief as may be just in the premises.

JAMES E. CARROLL,
Attorney for Appellants.

On the 31st day of August A. D. 1936, affidavits of poverty were filed by Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, and Helen J. Stevens, Administratrix of estate of Thomas McGovern.

In United States District Court

Order as to affidavits of poverty

August 31, 1936

This matter coming on for a hearing by way of motion of the attorney for the respondents Helen J. Stevens, Catherine
30 E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, in the above entitled action, supported by the affidavits of said respondents, and it appearing therefrom that the respondents have just cause of action against the United States of America and Chelsea Trust Company, and are unable to pay the cost of said action by reason of their poverty,

Now, therefore, it is ordered, and the Clerk is instructed to accept and file all necessary papers, serve all processes and perform all duties in such case without prepayment of costs by these respondents.

By the Court.

ELISHA H. BREWSTER,
U. S. District Judge.

In United States District Court

Praecipe for record

Filed November 4, 1936

To the Clerk of the United States District Court for the District of Massachusetts:

You will please incorporate in the transcript of record on appeal to the United States Circuit Court of Appeals for the First Circuit in the above entitled cause the following:

1. The Bill of Complaint.
2. The Answers of all Respondents.
3. Agreed Statement of Facts including Application of Thomas J. McGovern for admission as a member of the Southern Branch of the National Home for Disabled Volunteer Soldiers at Hampton, Virginia.
4. Opinion of Brewster, J. and Final Decree.
5. Recital of filing of Appeal of all Respondents except Chelsea Trust Company.

31 6. Petition for Severance of the respondent Chelsea Trust Company from the Appeal.

7. Assignment of Errors.
8. Order allowing Appeal.
9. Recital of filing of Affidavits and Petition for Leave to prosecute Appeal in forma pauperis.

10. Order allowing prosecution of appeal in forma pauperis.
11. Citation and Admission of Service.
12. Praecipe of Appellant with Admission of Service.
13. Clerk's Certificate.

Witness this 3rd day of November A. D. 1936.

JAMES E. CARROLL,
Attorney for Appellants.

Due personal service of the within praecipe by copy is hereby admitted this 4th day of November A. D. 1936.

FRANK W. TOMASELLO,
Attorney for Appellee.

In United States District Court

Petition for severance of Chelsea Trust Company

Filed September 3, 1936

Now come Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll and Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, respondents in the above action, by their attorney, and state that the respondent, the Chelsea Trust Company, will not appeal from the decree of June 5, 1936, made in the
32 above entitled action, and they pray that the said respondent, Chelsea Trust Company, be severed from the appeal.

By their attorney,

JAMES E. CARROLL.

SEPT. 2, 1936.

I hereby assent to the filing of the within.

BERTHA R. KIERNAN,
Attorney for Chelsea Trust Co.

SEPT. 8, 1936.

Allowed:

ELISHA H. BREWSTER,
U. S. District Judge.

Recital as to citation

A citation on appeal to the United States Circuit Court of Appeals was issued on behalf of the respondents on the 31st day of August, A. D. 1936, and was made returnable in said appellate court on September 30, 1936. Service of said citation was duly acknowledged by the United States Attorney.

33 [Clerk's Certificate to foregoing transcript omitted in printing.]

(Memorandum. Orders of enlargement of time for docketing case to, and including November 28, 1936, are here omitted. A. I. Charron, Clerk.)

34 In United States Circuit Court of Appeals, First Circuit

Docket entries

Upon motion filed November 14, 1936, leave was granted appellants to proceed in forma pauperis.

Thereafter, to wit, on January 15, 1937, this case came on to be heard before Honorable George H. Bingham and Honorable James M. Morton, Jr., Circuit Judges, sitting, counsel in open court stipulating and consenting that the case be also submitted on briefs to Honorable Scott Wilson, Circuit Judge.

35 In United States Circuit Court of Appeals for the First Circuit

October Term, 1936

No. 3201

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.,
DEFENDANTS, APPELLANTS

v.

UNITED STATES OF AMERICA, PETITIONER, APPELLEE

Appeal From the District Court of the United States for the District of Massachusetts

Before BINGHAM, WILSON, AND MORTON, JJ.

Opinion of the court

Filed March 15, 1937

BINGHAM, J.: This is an appeal from a decree of the Federal District Court for Massachusetts ordering the Chelsea Trust Company of Chelsea, Massachusetts, one of the defendants, to pay to the plaintiff through its representative, Thomas Quinn, General Counsel of the Veterans' Bureau for the District of Massachusetts, the full amount of the deposit and accumulations thereon standing in the name of Thomas McGovern, the deceased veteran named in the bill of complaint; and enjoining the other defendants from transferring, encumbering, or in any way asserting any claim to said deposit and

accumulations. The action is a suit in equity brought in the name of the United States against the Chelsea Trust Company, a Massachusetts corporation doing a banking business in Chelsea,
36 Massachusetts, and Helen J. Stevens, a citizen of Massachusetts, individually and as administratrix of both the estate of Thomas McGovern and the estate of his deceased widow, and Catherine E. McGovern, a citizen of Massachusetts, Lena F. Donovan, a citizen of Connecticut, and Robert E. McGovern, an insane person, also a citizen of Massachusetts. The action is brought to have a deposit in the defendant bank, standing in the name of Thomas McGovern at the time of his death, declared the property of the plaintiff for the benefit of the Board of Managers of the National Home, at Hampton, Virginia.

The action arises out of the following facts which are stipulated by the parties or admitted by the defendants' answers to the allegations of the bill of complaint.

It appears that Thomas McGovern enlisted in the United States Army in 1877 and was honorably discharged in 1882; that on November 11, 1925, when 72 years of age, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, at Hampton, Virginia, under the provisions of the Act of Congress of June 25, 1910 (Title 24, s. 136, U. S. C. A.); that in his application for admission McGovern entered into an agreement in accordance with the requirements of said Act; that he died September 17, 1928, at the home, while a member thereof; that at the time of his death his wife, Annie J. McGovern, resided in Boston; that Helen J. Stevens and Catherine E. McGovern, daughters of said McGovern, were then living in Boston, and that a daughter, Lena F. Donovan, was living in New Haven, Connecticut, and a son, Robert E. McGovern, at Gardner, Massachusetts, having been committed as an insane person to the State Hospital in 1918; that the widow and children were his heirs at law; that at the time of McGovern's death his legal domicile was in Chelsea, Massachusetts, which was his residence at the time of his admission to the home; that he had not lived with his wife and daughters since 1904, who had no knowledge of his whereabouts for the last twenty years of his life; that the father and son had lived together in Chelsea up to 1918, when the latter was committed as an insane person; that the first knowledge of McGovern's death received by any of the defendants was on October
19, 1935, in a letter from the home addressed to the daughter,
37 Mrs. Stevens; that after McGovern's death no official or any one in behalf of the home made any endeavor to locate the wife or any of the four children; that at the time of his death he had a deposit in the defendant bank, account No. 1295, showing a balance due him as of July 3, 1925, of $3,841.10; that this deposit was not the proceeds of a government pension or any other kind of gratuity from the government, but was his own personal estate; that the wife,

Annie J. McGovern, died March 4, 1933, in Boston, where she resided; that the defendant Helen J. Stevens had been duly appointed administratrix of the estates of her mother and father; and that James E. Carroll, of Boston, had been duly appointed guardian of the son.

In his application for admission to the home, McGovern stated that he was married, that he had four children living, but that their names and addresses were unknown.

The Act of Congress of June 25, 1910, c. 384, s. 1 (36 Stat. 736; Title 24, c. 3, s. 136 U. S. C. A.), provides:

"Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said Home, that on the death of said applicant while a member of such Home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said Home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided."

This is understood to be the first time the validity of the Act, insofar as it relates to personal property owned by a member of a
38 home at the time of his death, no part of which was pension money, or the proceeds of pension money, has been questioned. But here the appellants contend that the Act is unconstitutional, insofar as it undertakes, upon the member's death, to vest title to such property in the Board of Managers where he leaves surviving him heirs or next of kin, and also insofar as it subjects them to a proceeding to reclaim the same within five years after the member's death without requiring notice of the death to be given, so that they may assert a reclamation claim.

The Act makes no provision of any kind requiring the Board of Managers or any one connected with the home to give notice to the heirs or next of kin of the death of a member, whether they know or have reason to believe that he left heirs or next of kin or not. It seems to us that if Congress had the power to legislate concerning the devolution of the personal property of a deceased member, none of

which was pension money or derived from the government, that in order to foreclose the rights of heirs or next of kin within five years after the death of the member, it should have provided for the giving of notice of his death by publication and otherwise, so that the heirs or next of kin would at least have an opportunity to assert a claim of reclamation within the period of five years limited by the statute; and that in no event should they be deprived of their rights in the estate of the deceased member without notice and an opportunity to assert a claim. See Wilbur v. Tobey, 16 Pick. 177, 180; Hamilton v. Brown, 16 U. S. 256, 268, 269, 270, 275; Christianson v. King County, 239 U. S. 356. Here no notice was given or attempted to be given, and no knowledge of the death of the member was acquired until October 19, 1935, more than five years after his death on September 17, 1928, when a letter from the home giving such information was received by the defendant Stevens.

But independent of the fact that the Act makes no provision for notice, the question arises, under what provision of the Constitution Congress acquired power to enact a law providing that, upon the death of a member, all of his personal property of the character here in question shall "at once pass to and vest in said Board of Managers"

and not in the administrator or administratrix of his estate
39 appointed under the laws of the State in which he was domiciled at the time of his death, and where it will be administered according to such laws for the benefit of his creditors and heirs at law or next of kin. No such provision has been called to our attention and we know of none.

The tenth amendment to the constitution provides that "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

From a time antedating the adoption of the Federal Constitution, the States have uniformly enacted laws providing for the devolution of property of intestates dying domiciled within their borders, and such laws have been enacted and are in force in Massachusetts, where McGovern was domiciled at the time of his death. They provide for the appointment of administrators to administer the estate of persons dying intestate (Gen. Laws of Mass., 1921, c. 193), for the ascertainment of the property belonging to the estate, the determination and payment of its debts, and the distribution of the remainder among the heirs. And chapter 190 provides that the surviving wife, after payment of the debts of the deceased, and the charges of his last sickness and funeral, and of the settlement of his estate, and subject to chapter 196, if he leaves issue surviving, shall take one-third of the personal estate, and the remainder shall be divided in equal shares among his children.

Under the laws of Massachusetts the title to the personal property of a decedent vests, in the first instance, in the administrator; but under the Act of Congress of 1910 it is made to vest in the Board of

Managers, and the title becomes absolute in that board unless the heirs and next of kin by some good fortune, not provided for in the Act, acquire notice of the death of the member and begin reclamation proceedings within five years of his death.

We think that Congress in the enactment of the above statute, insofar as it provides that the personal property of a deceased member, no part of which was acquired from the government as pension money or bounty, "shall at once pass to and vest in the Board of Managers", acted without authority and in violation of the reserved rights of the States; that the Act in this respect and to this
40 extent is unconstitutional and void (see United States v. Butler, 297 U. S. 1); and that the contract based upon the Act rises no higher than the Act on which it is based. It was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will.

Whether the pension money of a deceased member of a home, in the hands of its treasurer at the time of death, was included within the provisions of the Act of 1910, was a close and doubtful question. It was held by this court in 1930 not to be. Durack v. National Home for Disabled Volunteer Soldiers, 44 Fed. (2d) 516. But in December 1936, when the question came before the Supreme Court, it was held that such money was embraced within the terms of the Act of 1910 and went to the new class of beneficiaries named in that Act. National Home for Disabled Volunteer Soldiers v. Wood, 299 U. S. ; 81 Law Ed. Adv. Op. 105. It is assumed, so far as this case is concerned, that Congress had the power to determine how its own gifts of pension money, remaining in the hands of the treasurer of a home at the time of a member's death, should be disposed of; and that, as to such money, the Act of 1910 was constitutional. But we have no such question before us for decision.

The decree of the District Court is vacated, and the case is remanded to that court with directions to enter a decree in favor of the administratrix of the estate of Thomas McGovern.

Dissenting opinion

MORTON, J. (Dissenting): Admission to the Soldiers' Home was a special privilege, to which the Government had right to attach any conditions which it saw fit. Those with which we are concerned are contained in an Act of Congress. No question can, therefore, be raised as to their reasonableness, as it might be perhaps if they had been made by an administrative board. McGovern agreed in the most explicit way, that if admitted to the Home, all his personal property should, upon his death while a member of the Home, at once pass to and vest in its Board of Managers, subject to being "reclaimed" by any person entitled to take it by inheritance at any time within five years after his death. The Act itself provides that acceptance
41 of the application shall constitute such a contract, and it also provides for explicit notice of this provision to all applicants for admission.

Contracts to dispose of one's property in a specified way at one's death are valid. Ex parte Simons, 247 U. S. 231; Jenkins v. Stetson, 9 Allen (Mass.) 128; Parker v. Coburn, 10 Allen (Mass.) 82. It has also been held that the particular form which the contract takes is not material; if the intention is clear and the consideration adequate and there was no taint of fraud or over-reaching, the contract will be enforced. Strakosch v. Connecticut Trust & Safe Deposit Co., 114 Atl. 660 (Conn.); Best v. Grolapp et al., 69 Neb. 811, 96 N. W. 641, per Roscoe Pound, Commissioner, s. c. 5 Am. & Eng. Annotated cases 491; Keefe v. Keefe et al., 125 Pac. (Cal.) 929; Johnson v. Hubbel, 5 Am. Dec. 773, with full notes.

My brethern refer to the fact that no notice of McGovern's death was sent to his family by the authorities of the Home, and intimate that there should have been a provision for such notice, or at least for notice by publication in the Act, in order to make it valid. But Congress may well have thought that if an inmate's relatives had so completely lost touch with him that they did not learn of his death for five years after it occurred, it would be proper that such personal property as he left should go to the Government on whose bounty he had been living, rather than to them. The whole matter is one of contract, and I see no sufficient reason for not giving full effect to the contract which McGovern made. Nat'l Home v. Wood, 299 U. S.—It does not seem to me that in imposing this condition on admissions to the Home Congress infringed the reserved right of the States to control the disposition of the property of decedent or in any other respect acted unconstitutionally. I think that the judgment appealed from should be affirmed.

42 In United States Circuit Court of Appeals

Final decree

March 15, 1937

This cause came on to be heard January 15, 1937, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 15, 1937, here ordered, adjudged and decreed as follows: The decree of the District Court is vacated, and the case is remanded to that court with directions to enter a decree in favor of the administratrix of the estate of Thomas McGovern.

By the Court.

ARTHUR I. CHARRON, *Clerk.*

[Clerk's Certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

File No. 41, 624. U. S. Circuit Court of Appeals, First Circuit. Term No. 143. The United States of America, Petitioner, vs. Helen J. Stevens, Administratrix, et al. Petition for a writ of certiorari and exhibit thereto. Filed June 15, 1937. Term No. 143 O. T. 1937.

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 143

UNITED STATES OF AMERICA, PETITIONER

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the First Circuit entered in the above-entitled case on March 15, 1937, reversing the judgment of the United States District Court for the District of Massachusetts.

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24–27) is not yet officially reported. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Act of June 25, 1910, c. 384, 36 Stat. 703, is unconstitutional.

2. Irrespective of the constitutionality of the Act, is a contract, freely entered into, valid and enforceable where it provides for the disposition of personal property of a member of a national home for disabled volunteer soldiers in the event of his intestacy.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra,* pp. 8–9.

STATEMENT

The agreed statement of facts (R. 16–19) may be summarized as follows:

Thomas McGovern, an honorably discharged veteran, on November 11, 1925, was admitted to the Southern Branch of the National Home for Disabled Volunter Soldiers at Hampton, Virginia (hereinafter referred to as the "Home"), where he died on September 17, 1928.

In compliance with the terms of the Act of June 25, 1910, *infra,* p. 8, at the time of his admission, and in his application, he agreed as follows (R. 17):

> The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, [*sic.*] use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and [*sic.*] subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; * * *.

McGovern died on September 17, 1928, and was survived by a wife and four children, one of whom, a son, had been declared insane in 1918 (R. 17–18). Since 1904, McGovern had not lived with his family, and, although the son lived with him until his commitment to the asylum in 1918, for the last twenty years of his life his wife and his other children had no knowledge of his whereabouts (R. 18). In his application, McGovern did not give the address of any of his family, nor did anyone on behalf of the Home make any attempt to locate his wife or children, who did not learn of his death until October 19, 1935 (R. 18), more than five years

after McGovern's death. At the time of his death, McGovern, whose legal domicile was Chelsea, Massachusetts, had a deposit in the Chelsea Trust Company, which, on July 3, 1925, amounted to $3,841.10, represented by account No. 1295 (R. 18). He also had a deposit in the Boston Five Cents Savings Bank, which, on October 15, 1925, amounted to $1,980.10, represented by account No. 701775 (R. 18). It does not appear that any claim for the property was ever filed by respondents.

A bill of complaint was filed by the United States in the United States District Court for the District of Massachusetts against the Chelsea Trust Company and the respondents, on April 10, 1936, in which bill the United States alleged that the Trust Company refused to pay over to it the amount of the deposit, because of the claim of respondents, and asked that the bank deposit be turned over to it (R. 1–6). The bill was answered by the Trust Company, by Helen J. Stevens, who had theretofore been appointed administratrix of the estate of Thomas McGovern, and by the heirs of Thomas McGovern, the answer denying the application of the statute to the particular facts (R. 6–16). On June 5, 1936, the District Court entered judgment for the United States and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The court erred:

1. In holding that the Act of June 25, 1910, was unconstitutional.

2. In holding that the Act of June 25, 1910, attempts to control the descent and devolution of the property of the members of the Home contrary to the provisions of the Tenth Amendment to the Constitution.

3. In holding that the Act should have provided for notice by publication or otherwise of a member's death.

4. In failing to hold that a valid and enforceable contractual relationship was established between the Home and the member upon his admission.

5. In reversing the judgment of the District Court for the District of Massachusetts.

REASONS FOR GRANTING THE WRIT

1. The court below has decided that the Act of June 25, 1910, *infra,* p. 8, is unconstitutional, because it violates the Tenth Amendment to the Constitution. The Act has been in effect for approximately twenty-seven years, and contracts entered into pursuant to the terms thereof involve the potential estate of a very large number of veterans who are members of National Homes. The court below has decided an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision of the court below is in probable conflict with the decision of this Court in *National Home for Disabled Volunteer Soldiers* v. *Wood*, 299 U. S. 211, and with the decision of the Circuit Court of Appeals for the Seventh Circuit in that same case, 81 F. (2d) 963. It was there held that a contract entered into in accordance with the Act of 1910 was valid and enforceable, and determined the manner in which the pension money of a deceased member should pass. While the constitutionality of the 1910 Act was not raised or presented in the *Wood* case, nevertheless it would follow that if the Act in question were unconstitutional that case would not serve as a precedent, and the contention originally advanced by the Government, namely, that the Act of July 1, 1902, would control the disposition of pension money of deceased members of a Home, might well be open. While the court below intimated that the 1910 Act might be constitutional in so far as it relates to pension money, that question was not before it, and the entire purpose of the 1910 Act, which aims at preventing escheat of personal property belonging to deceased members, would not be accomplished. Cong. Rec., Vol. 45, pp. 7011–7013, 7101. It is not believed that the 1910 Act is separable in respect of the different classes of personal property enunciated therein.

3. Finally, the decision of the court below would appear to be incorrect. Congress clearly recognized its inability to legislate in respect of descent

and distribution. In order, however, to prevent escheat of personal property belonging to deceased members, it adopted the expedient of requiring a member when entering the home by contract to agree as to the manner in which his personal property should pass upon his death. Contracts which have for their purpose the distribution of certain property of an individual after his death are enforceable. *Ex parte Simons,* 247 U. S. 231; *Brooks* v. *Yarbrough,* 37 F. (2d) 527 (C. C. A. 10th); *Richardson* v. *City Trust Co.,* 27 F. (2d) 35 (C. C. A. 7th); *Russell* v. *Jones,* 135 Fed. 929 (C. C. A. 5th); *Howe* v. *Watson,* 179 Mass. 30; *Wellington* v. *Apthorp,* 145 Mass. 69; *Jenkins* v. *Stetson,* 9 Allen (Mass.) 128. The statute condemned by the court below did no more than provide for the formation of contracts of a nature repeatedly held to be valid.

CONCLUSION

For the reasons stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

JUNE 1937.

APPENDIX

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent

of the applicant to accept membership upon the conditions herein provided.

Act of July 3, 1930, c. 863, 46 Stat. 1016, 1017 (U. S. C., Title 38, Sec. 11d):

SEC. 5. (a) When the consolidation and coordination herein provided for shall have been effected in the Veterans' Administration the President shall so declare by proclamation or order, whereupon the corporation known as the National Home for Disabled Volunteer Soldiers and the Board of Managers shall cease to exist.

(b) All contracts and other valid and subsisting obligations of the corporation, the National Home for Disabled Volunteer Soldiers, shall continue and be and become obligations of the United States, and the United States shall be considered as substituted for said corporation with respect to all such demands either by or against said corporation, unless and until they shall thereafter be superseded or discharged according to law. The outstanding obligations assumed by the United States by virtue of the provisions of this subdivision may be enforced by suit in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent as if said corporation were party defendant. No such suit shall be maintained upon any cause of action existing at the time of the dissolution of said corporation or arising simultaneously therewith, unless brought within two years from the time of such dissolution.

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OCTOBER TERM, 1937

No. 143

THE UNITED STATES OF AMERICA, PETITIONER

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts is reported in 15 F. Supp. 139. The opinion of the United States Circuit Court of Appeals for the First Circuit is reported in 89 F. (2d) 151.

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937 (R. 27). The petition for a writ of certiorari was filed June 15, 1937, and was granted October 11, 1937 (R. 28). The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the

Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a contract between the National Home for Disabled Volunteer Soldiers and an applicant for membership, which provides that in the event of the applicant's death while a member of the Home all his personal property shall at once pass to the Board of Managers of the Home subject to be reclaimed within five years by any legatee or person entitled thereto by inheritance, is valid and enforceable.

2. Whether the Act of June 25, 1910, c. 384, 36 Stat. 703, 736, is unconstitutional.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 28–30.

STATEMENT

The agreed statement of facts (R. 11–14) may be summarized as follows:

Thomas McGovern, an honorably discharged veteran, on November 11, 1925, was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers at Hampton, Virginia, hereinafter sometimes referred to as the "Home", where he died on September 17, 1928 (R. 11).

In compliance with the terms of the Act of June 25, 1910, *infra*, pp. 28–29, at the time of his admission and in his application, he agreed as follows (R. 14):

> The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, *and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member;* * * * [Italics supplied.]

McGovern died on September 17, 1928, and was survived by a wife and four children, one of whom, a son, had been declared insane in 1918 (R. 11, 12). Prior to 1904 McGovern's family had lived with him in Chelsea, Massachusetts. Thereafter he continued to reside in Chelsea, and his son lived with him until commitment to the asylum in 1918. The wife and other children, however, lived apart. For the last twenty years of McGovern's life they had no knowledge of his whereabouts (R. 12). In his application McGovern stated that he was married and had four children living, but that "the name and address of his wife, or nearest relatives, is un-

known" (R. 13). When McGovern died, the Home did not make any attempt to locate his wife or children, and they did not learn of his death until October 19, 1935 (R. 12), more than five years after it occurred. At the time of his death, McGovern, whose legal domicil was Chelsea, Massachusetts, had a deposit in the Chelsea Trust Company which, on July 3, 1925, amounted to $3,841.10, represented by account No. 1295 (R. 12). He also had a deposit in the Boston Five Cents Savings Bank which, on October 15, 1925, amounted to $1,980.10, represented by account No. 701775 (R. 12). It does not appear that any claim for the property was ever filed by the respondents with the Board of Managers of the Home.

On April 10, 1936, a bill of complaint was filed by the United States in the United States District Court for the District of Massachusetts against the Chelsea Trust Company and the respondents, in which bill the United States alleged that the trust company refused to pay over to it the amount of the deposit because of the claim of the respondents, and asked that the bank deposit be turned over to it (R. 1–3). The bill was answered by the trust company, by Helen J. Stevens, who had theretofore been appointed administratrix of the estate of Thomas McGovern, and by the heirs of Thomas McGovern, the answers denying the application of the statute to the particular facts (R. 4–10). On June 5, 1936, the District Court entered judgment for the United States (R. 15), and

on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting (R. 22–27).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Act of June 25, 1910, is unconstitutional.

2. In holding that the Act of June 25, 1910, attempts to control the descent and devolution of the property of the members of the Home contrary to the provisions of the Tenth Amendment to the Constitution.

3. In holding that the Act should have provided for notice by publication or otherwise of a member's death.

4. In failing to hold that a valid and enforceable contractual relation was established between the Home and the member upon his admission.

5. In reversing the judgment of the District Court for the District of Massachusetts.

SUMMARY OF ARGUMENT

I

Pursuant to the Act of June 25, 1910, *infra*, p. 28, McGovern, the deceased, duly signed an agreement upon his admission to the National Home for Disabled Volunteer Soldiers which provided that, in the event of his death while a member of the Home, all his personal property should at once pass to and vest in the Board of Managers of the Home,

subject to be reclaimed within five years by any legatee or person entitled to take the property by inheritance. The terms of this agreement are explicit and leave no room for construction. The contract was for a valuable consideration and its provisions are eminently reasonable. McGovern was entitled to dispose of his property by contract as he chose. Instead of cutting off completely the rights of the relatives in the event of his intestacy, he put those rights to the hazard of assertion within five years of his death. Nothing is more reasonable than to suppose that an aged and disabled veteran would prefer to have his property go to his associates in his last home rather than to relatives who are so out of contact with him that they do not learn of his death until more than five years after it has occurred.

II

It does not appear that the agreement which McGovern made, as thus construed, offends any policy or provision of law of the Commonwealth of Massachusetts. While no discussion has been found in the Massachusetts cases of any precise analogue of this contract, decisions concerning essentially similar contracts seem to place its validity beyond doubt. The effect of the contract is to create a property right enforceable in equity against whoever is in possession of the property.

III

The court below held that the Act of June 25, 1910, was unconstitutional because it invaded the reserved powers of the States in that it purported to regulate the descent and distribution of property within the various States. The court has clearly misapprehended the purpose and effect of the statute. It makes no attempt to regulate or affect, in and of itself, the devolution of property within any State. It simply defines the contractual conditions upon which a veteran may obtain entrance into a Veterans' Home. The subject of the contract is one with which the Government had a right to deal, since it affected an instrumentality which the Government had created and maintained and as to which it had the right to define conditions of admission. There is no showing that the contract would not have been fully enforceable under State law. Nor is any authority cited to show that the only property rights created by such a contract are those which would be recognized by State law. Since the respondents' rights are entirely dependent upon the contract between McGovern and the Home, the question of their right to notice of his death is merely one of construction of the contract.

IV

Since the provisions of the Act of June 25, 1910, appear not to be severable, affirmance of the judgment below would seem to require abandonment of

the holding in *National Home for Disabled Volunteer Soldiers* v. *Wood*, 299 U. S. 211, that the Act of 1910 supersedes the Act of July 1, 1902, with respect to the disposition of pension moneys of a deceased member.

ARGUMENT

I

The contract between Thomas McGovern and the National Home for Disabled Volunteer Soldiers (to which the United States has succeeded as a party, Act of July 3, 1930, *infra*, p. 29) contained two provisions here significant. It was agreed, first, that if McGovern died while a member of the Home leaving no heirs at law or next of kin all his personal property not disposed of by will should vest in and become the property of the Board of Managers of the Home. Secondly, it was agreed that, in any event, upon McGovern's death while a member of the Home, all his personal property should at once pass to and vest in the Board of Managers, subject to be reclaimed by any legatee or person entitled to take the property by inheritance within five years after such death.

The terms of this contract are explicit and appear to leave no room for construction. Manifestly the second part of the contract cannot be ignored. Its purpose, on the face of the instrument, is plain. Had the first provision stood alone, the Home would have had no certain means of determining when it was entitled to apply the prop-

erty to its ultimate purpose—expenditure for the sole use and benefit of the post fund of the Home, to provide comforts and entertainment for the surviving members in addition to those furnished by the Government. See *In re McGhee's Estate,* 268 N. Y. S. 79, 82, 83. There was need for such means both in the case in which the surviving member was not known to have left any heirs or next of kin and in the case in which the identity, location, or continued existence of relatives known once to exist was unknown. The second provision of the contract appears clearly to have been inserted to meet these contingencies. By the terms of the contract the Board of Managers of the Home acquired title to the personal property of the deceased member immediately upon his death, subject to the claims of the designated persons duly asserted within the designated period. At the expiration of that period the Board's title became absolute. The plain language of the contract refutes any other construction.

The contract as thus construed is an eminently reasonable one. There can be no dispute that the Home might have imposed any conditions which it saw fit as conditions precedent to the admission of a member, provided that such conditions did not contravene any provision of law. Indisputably, the gratuitous support and care of the member constitutes a valuable consideration for such a contract. Thus, the law is well settled that a home

for aged, infirm or other persons may require as a consideration for admission that members assign to it absolutely not only all property of which they may be possessed but all property which they may acquire thereafter.[1] *Newburyport Soc. Rel. Aged Women* v. *Noyes,* 287 Mass. 530; *St. Benedict Order* v. *Steinhauser,* 234 U. S. 640. The present contract is none the worse for not having gone to this extreme. The Home dealt with transparent fairness with prospective members. The member was to be left in substantially complete control of his property. He could dispose of it by will. Or he could permit it to pass by intestacy, subject only to being claimed within the designated period by the persons entitled to claim it.

The respondents mistakenly assume that the contract intended, or by law was required, to preserve the rights of a member's heirs or next of kin as they would have been if no such contract had been made. The heirs or next of kin had no abso-

[1] It has been customary for certain Federal and State homes for old soldiers to require either by contract or otherwise that such members contribute part of the pension which they receive as a partial contribution toward the upkeep of the home. *United States* v. *Bowen,* 100 U. S. 508; *Brooks* v. *Hastings,* 192 Pa. St. 378; *O'Donohue* v. *Soldiers' Home,* 65 N. J. L. 484; *Howell* v. *Sheldon,* 82 Neb. 72; *Ball* v. *Evans,* 98 Iowa 708; *Brownlee* v. *Board of Directors,* 22 Cal. App. 207; *Treadway* v. *Board of Directors,* 14 Cal. App. 75. This is true notwithstanding the fact that the Congress has exclusive power to legislate concerning the disposition of pension money while that money retains its identity as such. Compare *Trotter* v. *Tennessee,* 290 U. S. 354, 356; *McIntosh* v. *Aubrey,* 185 U. S. 122.

lute right in the member's property. He might have used it for his own benefit, or given it away. He might by contract have assigned it outright to the Home. Or he might have provided that, failing disposition of the property by will, it should vest at once and absolutely in the Home upon his death. Instead of cutting off thus completely the rights of his relatives in the event of his intestacy, he put those rights to the hazard of assertion within five years of his death. There is no ground whatever for supposing that the contract, which plainly had this effect, did not have this intention. Nothing is more reasonable than to suppose that an aged and disabled veteran would prefer to have his property go to his associates in his last home rather than to relatives who are so much out of contact with him that they do not learn of his death until more than five years after it has occurred.

The facts of the present case, as disclosed by the record, afford striking illustration of the probable intention of the contract and of its fairness and reasonableness as so construed. The deceased's wife, Anne J. McGovern (who died in 1933), lived with the deceased in Chelsea, Massachusetts, until 1904 (R. 12). At that time the wife and the respondent daughters separated from the deceased. For the last twenty years of the deceased's life, they had no knowledge of his whereabouts, although he continued to reside in Chelsea and still had a legal residence there at the time of his death

in 1928 (R. 12). Meanwhile the wife and daughters took up their residences in Boston and in New Haven (R. 12). The inference appears clear that the wife and daughters, having left Chelsea while the deceased remained there, had it within their power to learn of his whereabouts. Upon his entrance into the Home in 1925 Thomas McGovern stated that he had a wife and four living children but that their names and addresses were unknown to him (R. 13). In these circumstances he made a contract which in simple and comprehensible terms provided that in return for the care to be given him all his personal property should, in the event of his death while still a member of the Home, "at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after" his death. There is no reason to suppose that Thomas McGovern had any other intention than that his property should go to the Board for the benefit of the post fund, as provided, in the event that his wife and children—supposing them to be still living—failed to claim the property within the stated period, as they did fail.

II

The opinion of the court below is devoid of evidence or argument to show that the contract between McGovern and the Home, as thus construed, offends any policy or provision of law of the Commonwealth of Massachusetts. The respondents in

their brief in opposition offer no such authority on the point, and we have been able to discover none. We do not find in the Massachusetts decisions a discussion of any precise analogue of this contract. Decisions concerning essentially similar contracts, however, appear to place the validity of the present agreement beyond doubt.

As long ago as 1864, the Supreme Judicial Court of the Commonwealth stated (*Jenkins* v. *Stetson*, 9 Allen 128, 132):

> That it is competent for a party to stipulate for the disposition of his property at the time of his decease is too well settled to admit of doubt or question. The validity of such an agreement has often been recognized by this court. *Fitch* v. *Fitch*, 8 Pick. 480. *Trull* v. *Eastman*, 3 Met. 121. *Canada* v. *Canada*, 6 Cush. 15.

Closely analogous to the agreement in question are contracts to pay money or deliver property at death. In *Krell* v. *Codman*, 154 Mass. 454, a person executed in England a covenant in solemn form that her executor should pay a certain sum to the promisee. Mr. Justice Holmes, speaking for the Court, stated (p. 456 *et. seq.*):

> In our opinion, such a covenant as the present is not contrary to the policy of our laws, and could be enforced here if made in this State. If it were a contract upon valuable consideration, there is no doubt it would be binding. *Parker* v. *Coburn*, 10 Allen 82. * * * So, again, until lately

> an oral contract founded on a sufficient consideration to make a certain provision by will for a particular person was valid. *Wellington* v. *Apthorp,* 145 Mass. 69. Now, by statute, no agreement of that sort shall be binding unless such agreement is in writing, signed by the party whose executor is sought to be charged . * * *.
>
> * * * There is no question here of any attempt to evade or defeat rights of third persons, which would have been paramount had the covenantor left the sum in question as a legacy by will. There is no ground for suggesting an intent to evade the provisions of our law regulating the execution of last wills,—if such intent could be material when an otherwise binding contract was made. See *Stone* v. *Hackett,* 12 Gray 227, 232, 233. * * *

See also *Parker* v. *Coburn,* 10 Allen 82; *Howe* v. *Watson,* 179 Mass. 30.

The contract in question was executed for a valuable consideration. It was in writing. Manifestly, the court below to the contrary notwithstanding (R. 26), it entailed no violation of "the provisions of * * * law regulating the execution of last wills."[2] The circumstance that the

[2] The court stated (R. 26) that the contract "was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will." The court gave no explanation for this construction of the contract, nor any citation of authority for this view of Massachusetts law. See, further, pp. 16–18, *infra.*

ultimate beneficial interest of the promisee depended upon the failure of the promisor to execute a will, and of his heirs or next of kin to assert their claims, affords no ground of differentiation from the cited cases. Compare *Davis* v. *Ney*, 125 Mass. 590; *Jones* v. *Old Colony Trust Co.*, 251 Mass. 309. No question is here presented of the rights of creditors, assuming that they have such rights. In the words of Judge Morton, dissenting below (R. 27):

> Contracts to dispose of one's property in a specified way at one's death are valid. *Ex parte Simons*, 247 U. S. 231; *Jenkins* v. *Stetson*, 9 Allen (Mass.) 128; *Parker* v. *Coburn*, 10 Allen (Mass.) 82. It has also been held that the particular form which the contract takes is not material; if the intention is clear and the consideration adequate and there was no taint of fraud or overreaching, the contract will be enforced. * * *
>
> * * * The whole matter is one of contract, and I see no sufficient reason for not giving full effect to the contract which McGovern made. * * *

If there be any possible question concerning the validity of the contract, it relates to the right of the United States under the contract to claim or retain possession of the property in the first instance as against the administrator. But that question in no view is presented here. For even

assuming that the rights of an administrator to custody of, and title to, the property were originally superior to those of the United States, the rights of the administratrix in the present proceedings are plainly not so superior. If the contract were no more than "an attempt to make a future testamentary disposition," as the court below suggested (p. 14, *supra*), and if the only right of the United States under it were to bring suit against the estate at the end of five years, the United States would be entitled here to prevail. A contract to make a future testamentary disposition is valid and enforceable in the Commonwealth of Massachusetts, as well as elsewhere.[3] The obligee of such a contract may maintain a suit against the administrator or executor of the estate of the deceased who stands in precisely the same place as would have stood his intestate or testator. *Donovan* v. *Walsh*, 238 Mass. 356, 361; *Howe* v. *Watson*, *supra*; *Harrison* v. *Conlan*, 10 Allen (Mass.) 85, 86. It does not affirmatively appear that the estate of McGovern owed any debts, and it has been held in similar circumstances that equity will refuse to enforce the naked legal right of an administrator to possession of the personal property of the deceased where such administrator

[3] See, in addition to the cases cited *supra*, pp. 13, 14, *Ex parte Simons*, 247 U. S. 231; *Brooks* v. *Yarbrough*, 37 F. (2d) 527 (C. C. A. 10th); *Richardson* v. *City Trust Co.*, 27 F. (2d) 35 (C. C. A. 7th); *Russell* v. *Jones*, 135 Fed. 929 (C. C. A. 5th).

has no duty to perform other than to turn over the money to the person entitled thereto. *Pierce* v. *Boston Savings Bank,* 129 Mass. 425, 434; *Lewis* v. *Lyons,* 13 Ill. 117, 121–122; *People* v. *Abbott,* 105 Ill. 588, 599; *Richardson* v. *Cole,* 160 Mo. 372, 377, 380. The contract being enforceable against the administratrix, and the suit being in equity, the Court can adjudicate the rights of all persons concerned without the necessity of remitting the United States to an independent action against the administratrix.

We do not believe, however, that such procedure is required under this contract or under the law of Massachusetts. The contract creates an immediate right in the Board of Managers (and now in the United States) upon the promisor's death. A contract to pay money at death is enforceable against the estate immediately upon death. *Parker* v. *Coburn, supra; Krell* v. *Codman, supra.* It would seem that this contract likewise gave rise to an immediate right to possession of any property of the deceased which might have been in the hands of an administrator or of third persons. Even in the case of contracts to make a will, the rule appears to be that an immediate property right is created in the promisee which is enforceable in equity against whoever is in possession of the property. In *Jenkins* v. *Stetson, supra,* a bond was executed for valuable consideration, providing that if at the death of the obligor "the said per-

sonal estate * * * shall come into the hands and possession of the said Jenkins or his heirs by will or otherwise, * * * then this obligation shall be void; otherwise, shall remain in full force." The obligee was held entitled to sue at once for the amount of the penalty and to be awarded execution for the amount of the property, as against the contention that no action could be maintained until the estate had been settled. Similar agreements have been held specifically enforceable in many cases. See *Bolman* v. *Overall*, 80 Ala. 451, 2 So. 624; *Keefe* v. *Keefe*, 125 Pac. 929 (Calif. App.); *Best* v. *Gralapp*, 69 Neb. 811, 815; *Brooks* v. *Yarbrough*, *supra*.

The existence of such a right, as the decisions under these contracts show, is in no way inconsistent with the normal functioning of the laws relating to the administration of decedents' estates. Those laws would continue to function as occasion might arise. Whether or not administration proceedings would have been required to establish the right of the United States to immediate possession of the property, had that right been asserted, they would have been necessary to settle any controversy as to the rights of claimants against the Home and as to the rights, if any, of creditors. Had such claims been advanced, the United States would have taken any action at its peril, in the absence of administration proceedings. Here, however, no claims were advanced and administration proceedings were not required.

III

The court below disposed summarily of the contract which McGovern made by stating "that the contract based upon the Act rises no higher than the Act on which it is based" (R. 26). The Act itself (Act of June 25, 1910, c. 384, Sec. 1, 36 Stat. 736) the court declared to be unconstitutional and void as "in violation of the reserved rights of the States," citing *United States* v. *Butler*, 297 U. S. 1.

We are unable to understand the reasoning by which the court arrived at this conclusion. The decision, we submit, is patently erroneous. At the commencement of its discussion the court said (R. 25):

> * * * the question arises, under what provision of the Constitution Congress acquired power to enact a law providing that, upon the death of a member, all of his personal property of the character here in question shall "at once pass to and vest in said Board of Managers" and not in the administrator or administratrix of his estate appointed under the laws of the State in which he was domiciled at the time of his death, and where it will be administered according to such laws for the benefit of his creditors and heirs at law or next of kin. No such provision has been called to our attention and we know of none.

Congress enacted no such law as that stated. The Act of June 25, 1910, does not provide by enactment what shall happen to the personal property of a

member upon his death. It does not apply to members theretofore admitted. As to members thereafter to be admitted it states only the conditions of their admission. Even as to such members it does not provide that the conditions stated shall automatically attach upon admission. Rather it specifically directs the Board of Managers to obtain "the consent of the applicant to accept membership upon the conditions herein provided." Plainly the Act of June 25, 1910, does not present the constitutional question which was stated, discussed and decided by the court below.

The source of Congressional power to give directions to the Board of Managers of the National Home for Disabled Volunteer Soldiers as to the terms upon which members shall be admitted does not appear to be doubtful. It is the same power by which under the Constitution that Home has been established and continuously maintained. We do not understand the court below to have questioned the constitutionality of the Home. The Federal Government plainly has an authority apart from contract over the members of such Homes—to provide for the discipline of the Home, dishonorably to discharge members, to stipulate the conditions upon which members shall remain in the Home, including the extent to which they shall contribute to its financial support. It has a more extensive authority to provide for the formation of contracts with members concerning these matters.

So long as these contracts are entirely voluntary and supported by adequate consideration, and so long as they are reasonably germane to the purposes for which the Home is conducted, no ground appears upon which their legally binding character can be assailed.

United States v. *Butler, supra,* assuredly affords no precedent for an assault upon the contract here in question. In that case, this Court held that a contract entered into pursuant to the Agricultural Adjustment Act was invalid because economic pressure was exerted against the farmer to sign it, and because the object sought was compliance with regulatory measures which the United States had no power to impose directly. No such situation is here presented. The soldier was not coerced to sign the contract. His entrance into the Home was optional. *O'Donohue* v. *Soldiers' Home,* 65 N. J. L. 484, 486; *Ball* v. *Evans,* 98 Iowa 708, 715. Nor were the terms of the contract which he was asked to sign as a condition of entrance themselves coercive. Under the contract the soldier remained at liberty to dispose of his personal property as he saw fit, either by disposition during his life or by will in the event of his death. In case of intestacy the contract itself provided, in effect, that his heirs would have had a right to assert a claim. Finally, the contract did not seek, or purport to seek, consent to any exercise of regulatory power. It was a contract affecting property rights as between

the Home and the member, similar to those regularly made between such institutions—private as well as public—and persons seeking admission thereto. The rights granted the Home were a form of compensation—and an entirely proper form—for the otherwise gratuitous care and support to be given the member.

A constitutional question of any character arises under the contract only if it be assumed that the contract would not have been enforceable according to its terms, under applicable State law, if it had been made between a privately conducted home for aged persons and a member. It has already been pointed out (pp. 12–18, *supra*) that the opinion of the court below fails entirely to show that the contract would not have been so enforceable. Citation is unnecessary for the proposition that an Act of Congress may not be declared unconstitutional upon grounds which are speculative or hypothetical or unproved. Nor is a constitutional issue presented under the Tenth Amendment in the absence of a showing that authorization of the contract in question was not a proper exercise by Congress of its power to establish and conduct the National Home for Disabled Volunteer Soldiers. Not in any view does the unreasonableness and inappropriateness of the authorization, as an exercise of that power, appear with the requisite clarity to warrant its disregard.

The power of the State which the court below deemed to have been invaded appears to have been its power to provide for the administration of decedents' estates and to determine the rules of descent and distribution. A contract which creates a property right enforceable against the administrator or other person in possession of a decedent's property cannot in any just sense be said to be a forbidden exercise or infringement of that power. The contract here in question does no more than create such a property right, in the same fashion as the familiar types of contracts already discussed (see pp. 13–18, *supra*). It gives to the Board of Managers of the Home the right to the decedent's personal property, upon his death, subject only to the claims of any legatee, heir, or next of kin duly asserted within five years. Who are the legatees or heirs entitled to claim the property would necessarily be determined by the laws of the State of the decedent's domicil, as the contract itself recognizes. The contract was indubitably made in furtherance of an activity in which the Federal Government is constitutionally authorized to engage. We are aware of no authority, and none has been cited, holding that the only property rights created by such a contract are those which would be recognized by State law. Compare *United States* v. *Butler, supra*, at p. 74; *First National Bank* v. *California*, 262 U. S. 366, 369, 370.

In addition to holding that the Act of June 25, 1910, violated the Tenth Amendment, the court below intimated that the validity of the statute was doubtful under the Fifth Amendment. The ground of the doubt was the failure of the Act to require that notice of the death of a member be given the next of kin, the suggestion being that the Act thus permitted property to be taken without due process of law (R. 24–25). The court did not specifically declare that enforcement of the contract would deprive the respondents of property belonging to them; but that was evidently its assumption. It seems manifest that the assumption is untenable. As already pointed out (pp. 10–11, *supra*) the heirs or next of kin have no absolute right in a member's property. Prior to McGovern's death, his property was subject to whatever disposition he saw fit to make of it, by gift, contract or will. He actually made a contract. The only rights which the respondents possess in the property covered by this contract are those which arise out of the contract. Compare *White* v. *United States,* 270 U. S. 175, 180, 181. The question as to the duty to give notice, therefore, is a question arising under the contract, not under the Constitution. Enough has been said (pp. 8–12, *supra*) to show that the contract imposed no such duty upon the Home. The duty lay upon the next of kin to institute the appropriate proceedings under State law to determine heirship and to present their claims.

It cannot be said that the contract is inequitable in this respect or that it works any hardship. These respondents had taken no steps to learn the address of their father for a period of over twenty years, and remained unaware of his death until approximately seven years had passed. The father, who professed not to know the names or addresses of his next of kin, voluntarily entered into a contract providing that the claims of respondents, if any, in his property should be presented by them within five years, which required that they should at least keep in sufficient touch with him to learn when he had died. Thereafter he deliberately refrained from executing a will disposing of the property in respondents' favor. In these circumstances, the five years having passed without claim, the respondents' rights in the property are lost.

IV

In *National Home for Disabled Volunteer Soldiers* v. *Wood*, 299 U. S. 211, this Court considered the Act of June 25, 1910, in its application to pension moneys of deceased members. It was there decided that that Act had superseded the Act of July 1, 1902, *infra*, p. 28, in which a different provision had been made for the disposition of pension moneys of a deceased member of the Home. While the question here presented was not considered in the *Wood* case, it should be pointed out that an affirmance of the judgment under review would

probably require an abandonment of the decision there made.

Speaking of the *Wood* case, the court below said that it assumed that Congress had the power to determine the disposition of gifts of pension money, and that the Act of June 25, 1910, was constitutional insofar as it made provision therefor (R. 26). Whether the Act is susceptible to such an interpretation is extremely doubtful. This Court has frequently stated that in the absence of a saving clause the presumption is against the severability of a statute. It has been declared to be the general rule that the unobjectionable part of a statute can not be deemed severable unless it clearly appears both that legal effect can be given to such part standing along, and that the Congress intended that part so to stand.[4] There appears to be no ground to suppose that Congress would have enacted the Act of 1910 if it were to be applied to pension moneys of deceased members alone. On the contrary, the context of the Act and the Congressional debates (Cong. Rec., Vol. 45, pp. 7011–7013, 7101) make clear that the primary intent of Congress was to comprehend all personal property of deceased members of the Home, not to authorize contracts providing another manner in which

[4] *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312–313; *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362; *Utah Power Co.* v. *Pfost*, 286 U. S. 165, 185; *Dorchy* v. *Kansas*, 264 U. S. 286, 289–290; *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241–242.

pension moneys would pass. Indeed, until this Court's decision in the *Wood* case, a conflict of opinion existed as to whether pension moneys were comprehended at all in the statute. 299 U. S. at 212.

If, as found by the court below, the Act in question were unconstitutional in so far as it authorized contracts relating to the disposition of personal property other than pension moneys, it would seem to follow that the entire Act would fail. We do not believe, however, that the statute is unconstitutional in any part.

CONCLUSION

It is respectfully submitted that the decision of the court below is incorrect, and that the case should be reversed with instructions to the court below to affirm the decision of the District Court.

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NOVEMBER 1937.

APPENDIX

Act of July 1, 1902, c. 1351, 32 Stat. 552, 564 (U. S. C., Title 24, Sec. 139):

> Hereafter any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the Branch of said National Home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of theHome under the direction of the Board of Managers, subject to future reclamation by the relatives hereinbefore designated, upon application filed with the Board of Managers within five years after the pensioner's death.

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant

at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

Act of July 3, 1930, c. 863, 46 Stat. 1016, 1017 (U. S. C., Title 38, Sec. 11d):

SEC. 5. (a) When the consolidation and coordination herein provided for shall have been effected in the Veterans' Administration the President shall so declare by proclamation or order, whereupon the corporation known as the National Home for Disabled Volunteer Soldiers and the Board of Managers shall cease to exist.

(b) All contracts and other valid and subsisting obligations of the corporation, the National Home for Disabled Volunteer Soldiers, shall continue and be and become obligations of the United States, and the United States shall be considered as substituted for

said corporation with respect to all such demands either by or against said corporation, unless and until they shall thereafter be superseded or discharged according to law. The outstanding obligations assumed by the United States by virtue of the provisions of this subdivision may be enforced by suit in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent as if said corporation were party defendant. No such suit shall be maintained upon any cause of action existing at the time of the dissolution of said corporation or arising simultaneously therewith, unless brought within two years from the time of such dissolution.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, *Petitioner*

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

On Petition for a Writ of Certiorari to the Circuit Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

PRESS OF GEO. H. DEAN CO., BOSTON

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OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24-27) is reported in 15 F. Supp. 139. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is reported in 89 F. (2d) 151, (sub. nom. *Stevens* v. *United States*).

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. Petition for a writ of certiorari was filed June 15, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Is the Act of June 25, 1910, c. 384, 36 Stat. 703, applicable where a member of a national soldiers' home dies intestate, leaving a widow and four children as his heirs?

2. Does the contract contained in the deceased member's application for admission to the "Home," based on said Act, permit the government to deprive the widow and children of their share of the estate of such deceased member dying intestate, where the government makes no attempt to discover or determine his heirs, with knowledge that said member had a wife and four children living at the time he entered the "Home" two and one-half years prior to his death?

STATUTE INVOLVED

The statute involved is set forth in Appendix A.

STATEMENT

The agreed statement of facts (R. 16-19) may be summarized as follows:

One Thomas McGovern, sometimes known as "Thomas McGoveran," enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in the State of Virginia (which place is hereinafter referred to as the "Home"). McGovern signed the usual application for admission to the "Home," based on the provisions of the Act of June 25, 1910, *infra*, Appendix A. This application contained the following provisions:

> "The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law

or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.' ''

At the time of his admission to the "Home," McGovern had a wife and four children living. The wife and three of the children resided in Boston, Massachusetts. Another child was married and lived in New Haven, Connecticut.

In his application, McGovern stated he had a wife and four children, address unknown.

McGovern died September 17, 1928, while a member of the "Home," having lived therein for about two years and ten months. He was survived by his wife and four children, one of whom, a son, had been declared insane in 1918 (R. 17-18). McGovern was a resident of the City of Chelsea, Suffolk County, Massachusetts, since 1889, which place was his legal domicile to the time of his death (R. 18). In 1904 the McGovern home was broken up, McGovern and his son living in one part of Chelsea and Mrs. McGovern and the three other children living in another part of the same city. At the time of his death, McGovern's widow and two of the children were residents of Boston, Massachusetts. Another child lived in New Haven, Connecticut, and the insane son was an inmate of the Massachusetts State Hospital for the Insane at Gardner, Massachusetts.

No one, in behalf of the "Home," made any attempt to locate the widow or children at the time of McGovern's death or at any other time. The widow, Anne J. McGovern, died March 4, 1933, (R. 19) almost four and one-half years after the death of her husband, never having learned of his death (R. 18). The heirs-at-law and next of kin of said McGovern had no knowledge of McGovern's death at any time in the period which constituted five years after September 17, 1928.

At the time of his death, McGovern had a deposit in the Savings Department of the Chelsea Trust Company amounting to over $3,800 (R. 18) and a deposit in the Boston Five Cents Savings Bank just short of $2,000 (R. 19).

The first knowledge of the death of the decedent received by any of his heirs-at-law and next of kin was contained in a letter from the "Home" dated October 19, 1935, addressed to the Respondent Stevens. Subsequently the said Helen J. Stevens was duly appointed administratrix of the Estate of Thomas McGovern by the Suffolk County Probate Court of Massachusetts, and James E. Carroll, Esq., of Boston, was duly appointed, by the same Court, guardian of Robert E. McGovern, the son of the decedent, an insane person.

All of said money and other property, the Estate of said Thomas McGovern, now in the control of the Government, was his own personal estate, and none of it was derived from the United States Government in the form of a pension or otherwise (R. 19).

A bill of complaint was filed by the United States in the United States District Court for the District of Massachusetts against the Chelsea Trust Company and the respondents, on April 10, 1936, in which bill the United States alleged that the Trust Company refused to pay over to it the amount of the deposit, because of the claim of respondents, and asked that the bank deposit be turned over to it (R. 1-6). The bill was answered by the Trust Company, by Helen J. Stevens, who had theretofore been appointed administratrix of the estate of Thomas McGovern, and by the

heirs of Thomas McGovern, the answer denying the application of the statute to the particular facts (R. 6-16). On June 5, 1936, the District Court entered judgment for the United States, and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting.

ARGUMENT

The petitioner advances, as a reason for granting the writ, that the court below has decided an important question of federal law which should be settled by this court—to wit: that the Act of June 25, 1910, C. 384, 36 Stat. 703, is unconstitutional because a violation of the Tenth Amendment.

But that question, we submit, is not really involved and cannot be finally settled in the determination of this case. We have not contended that the Act as a whole is an unconstitutional invasion of the powers of the states reserved under the Tenth Amendment. The sole question here at issue is whether the Act and an agreement made pursuant to its provisions have any application to the personal estate of a deceased member of a soldiers' home who dies intestate, leaving known heirs. We submit that they do not and were not intended to apply in such circumstances. The issue, therefore, is simply one of the interpretation of the Act and the contract as applying to the peculiar facts involved in the instant case. Whether the Act as a whole is or is not a valid exercise of the powers of Congress will not necessarily be determined. For, if the Act and the contract made pursuant thereto be properly construed, the United States will in no event have any claim to the funds here involved, and the constitutional question raised by the court below will never be reached for decision.

In the recent case of *National Home* v. *Wood*, 299 U. S. 211, where this same Act was before this court in a case involving pension money, Mr. Justice Butler, in defining the scope and effect of the Act, said, at page 215, "Congress

intended to vest in the board of managers for the post fund only that which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State."

The Act was not intended to affect the estate of a deceased member in a soldiers' home if he left heirs. This means *known* heirs, and it must mean this because it is a presumption that every man leaves heirs or next of kin capable of inheriting. There is, however, no presumption as to who the heirs are; therefore there must be an inquest or other proper judicial proceedings to warrant a distribution. *Woerner American Law of Administration,* 3d Ed., p. 459. *Wilbur v. Tobey,* 16 Pick. 177.

Congress never intended this Act to affect the estate of deceased members of a soldiers' home where he left known heirs. 45 Cong. Rec. 7011, 7013, 7101. Appendix B. It is plain from the discussion in Congress when this Act was before it that the proponents of this legislation were seeking to prevent an escheat to the state of domicile of the deceased member, and nothing else.

By the Act of June 25, 1910, Congress for the first time enacted legislation affecting personal property of deceased members of soldiers' homes which was not derived from pension money. In the case now before the court, the government claims title to personal property of a deceased member of a soldiers' home who died intestate, on the ground that no heir has made a claim for it within five years from the date of the death of said member.

The reclamation period of five years was put into the bill to bar unknown heirs, and not known heirs such as a widow or children. It was the more remote heirs we all have that were to be penalized for failure to claim within the time stated.

These respondents deny that they are subject to this reclamation period contained in the Act because they are known heirs and known to the government by the very provisions of the contract; i.e., the application for membership where McGovern states he has a wife and four children, address unknown (R. 17).

McGovern knew that Massachusetts was the State of his domicile; he knew his heirs would be determined by the law of that State. He knew some legal notice would reach his wife and children on his death; he knew his estate would be administered according to law, his bank accounts would be paid to his administrator; that if he had heirs they would, after payment of his debts and the expenses of administration, receive their distributive share of his estate. He also knew that if he had no heirs, such administrator would distribute his estate to the "Home" for the benefit of the post fund, if no person claimed as an heir within five years from the date of his death, and Congress, when it passed this Act, believed that was the kind of contract every member of a soldiers' home made when entering a home. (See Appendix B).

If the Act is to be interpreted in the light of the law of escheat, the government cannot prevail because it neglected to take the steps necessary to establish an escheat; i.e., it failed to have a legal determination of McGovern's heirs. It is now attempting to deprive McGovern's heirs of their property without due process of law.

The petitioner's interpretation of this Act raises the question of its constitutionality. If the Act means that known heirs, as a widow and children, must be on their guard and demand the estate within five years of the death of the deceased member of the home when the fact of his death is concealed from them and known only to the government and its agents, these respondents assert the Act is unconstitutional and deprives them of their property without due process of law.

These respondents claim they can only be deprived of their share of this estate by proper legal proceedings and in no other way.

Hamilton v. *Brown*, 161 U..S. 256, 268, 269, 270, 275

Christianson v. *King County*, 239 U. S. 356

Wilbur v. *Tobey*, 16 Pick. 177-180

If the Act of June 25, 1910, was intended to substitute the United States for the State of Massachusetts in respect to the estate of McGovern, a deceased member of a soldiers' home who died intestate, then the United States must adopt the same procedure that the State of Massachusetts would be required to adopt; that is, a legal proceeding to determine heirs. Without this procedure, no title could vest in the State by escheat. *Wilbur* v. *Tobey,* 16 Pick. 177; *Hilton* v. *Hopkins,* 275 Mass. 59.

During the so-called reclamation period of five years, one of the heirs, Robert E. McGovern, was an insane person and still is such. At no time during that period was he mentally competent to claim his share of his father's estate. A disability by reason of insanity is recognized by the decisions of this court. See *DeArnaud* v. *U. S.,* 151 U. S. 483. The fact that an heir is under a disability during the reclamation period is another good reason for the requirement that there be a determination of heirs before a vesting of title when a state claims property by escheat because in these proceedings the rights of those who are under disability are protected and no advantages taken of the fact of their disability, as is quite apparent in the instant case.

In the petition now before the court, the government has placed great stress on the contractual relations of the parties, McGovern and the "Home." What is the contract? The respondents maintain that McGovern contracted that, if he died intestate leaving no heirs, meaning, of course, no known heirs, his property would vest in the "Home" and that remote persons claiming as heirs would have to claim within five years of the date of his death. Apparently the government contends that McGovern contracted that, on his death, dying intestate, all his property would pass immediately to the "Home," whether he left heirs or not and that, if he left heirs, they would have to reclaim within five years from the date of his death. It is plain McGovern made no such contract. The vesting of the title in the

"Home" depended entirely on his leaving no heirs, meaning, of course, no known heirs.

These respondents do not deny the right of a person to make a contract for the disposition of his property at the time of his decease, but contend that the contract between McGovern and the "Home" is entirely dissimilar from these contracts, held valid by various courts. In none of the cases that have been decided is there a question involving the rights of heirs or a limitation of time. Even in cases where elderly persons contract with Homes for the Aged, for their care, agreeing that all of their property, at their death, shall pass to the home, there is no question of the rights of heirs, nor is a time limit set. These contracts are made by semi-charitable institutions with their members because many of these institutions charge small sums for the care given, but expect to be supported and carried on by property received on the death of inmates.

United States soldiers' homes are supported by appropriations from Congress, and not by the estates of deceased members dying intestate, leaving no heirs. It is true, admission to a soldiers' home is a special privilege, but it is a privilege granted because of the member's military service in behalf of his country, and not because he may die intestate without heirs, and his property pass to the home.

The contention of the petitioner, that the decision of the court below is in probable conflict with the decision of this court in *National Home for Disabled Volunteer Soldiers* v. *Wood,* 299 U. S. 211, is not sound. In that case, the issue was whether or not pension money of a deceased member passed under the Act of June 25, 1910, C. 384, 36 Stat. 703, or under a prior act of Congress which dealt entirely with the disposition of pension money of deceased members of soldiers' homes, and this court held, in that case, that the Act now before the court superseded the old statutes which governed the disposition of the pension money of deceased members of soldiers' homes. The constitutionality of the said Act of June 25, 1910, was not before this court in that case.

CONCLUSION

It is submitted that the decision of the Circuit Court of Appeals is correct. The contention of the petitioner, that an important question of federal law is to be settled in this case by this court, is without merit. It is hardly likely that another case will arise like the one in issue. The real constitutional question, which cannot be settled in this proceeding, will arise under this Act when one of the states denies the right of the United States to receive the property of a deceased member, dying without issue, where there are no known heirs, and an escheat occurs. Then there will be an important question of federal law, deserving the consideration of this court.

The petition, therefore, should be denied.

Respectfully submitted,

CHARLES B. RUGG
WARREN F. FARR
JAMES E. CARROLL

July, 1937.

APPENDIX A

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

APPENDIX B

Discussion by Congressional Committee upon May 27 and May 28, 1910, concerning Act of June 25, 1910, C. 384, 36 Stat. 736, Sec. 136, Title 24, U. S. C., found in Vol. 45, Part 7, pp. 7011-13, 7101 of the Congressional Records. (61st Congress, 2nd Session.)

MR. TAWNEY:

"The reason for this provision is this—and I trust I may have the attention of the Committee, because this is a matter of considerable importance. At all of the homes there are a great many soldiers die, leaving on deposit in the banks of the city in which the home is located a certain amount of money. Now, if they die intestate and without heirs that money remains in the bank. Instances have occurred where men have fraudulently taken out letters of administration for the purpose of getting the money on deposit belonging to the soldier at the time of his death. At the Dayton Home in Ohio there is in the banks today over $30,000 unclaimed by relatives or heirs or legatees.

"That fund is increasing, and the committee had information to the effect that the State of Ohio, proceeding under the law of escheat, was about to bring suit against the managers of the banks to recover that money for the benefit of the State. There is in the neighborhood of $30,000 on deposit in the banks of Milwaukee, and there are large sums of money on deposit, unclaimed, in the banks of the cities where all of the other homes are located. Now: Proceeding upon the theory that *where the old soldier dies without heirs or legatees,* he would rather that money which he leaves behind should be paid into the post fund for the benefit and comfort of his old comrades rather than allow it to go back to the State, of which he might not even be a citizen, because these men who are in the home are not always citizens of the State in which the home is located; for that reason we have provided here, or we have incorporated

this provision, so that in every case where the old soldier dies and leaves money on deposit, or other property undisposed of by will and unclaimed by legatees or heirs, that money shall be used for the benefit of his comrades and not go back to the State under the law of escheat.

"That is the reason for it, and that is all this provision accomplished; and in order to make it legal this provision provides expressly that the form of application be so changed that every old soldier who applies for admission to one of these homes, in making out his application, is notified of this fact and his consent to the disposition of his money and property at the time of his death is obtained. In no other way can we change the law of descent in the States. I do not think there is a member of this House who can justly complain of or criticise the provision. It is in the interest of the old soldiers remaining here after their comrade has died without disposition of his property, that in that event his property, whatever it may consist of, may be deposited for the benefit of those old soldiers who are occupants of these homes."

MR. COX:

"I notice that the paragraph provides that the application shall constitute a binding and valid contract between the applicant and the Board of Managers, not only for the money that the soldier may have as a result of his pension, or the pension he may have remaining at the time of his death, but for all of his personal property. 'Is this proper legislation?' "

MR. TAWNEY:

"Now, the gentleman from Indiana is a lawyer, and a good lawyer, and he knows that is not the effect of this provision. I will say the provision was drawn by Judge Smith after the most careful consideration, taking into account the fact that in all of the States there is provision made for the settlement of estates belonging to deceased citizens. This provision would call to the attention of the applicant and it would be notice to

him that if he had no heirs, which of course he would know, or if he had not made a will disposing of his property, he would have notice of the fact and could arrange to dispose of his property by will."

MR. COX:

"Am I right in construing the provision to mean that the application of the applicant seeking admission to the institution and his admission constitutes a binding contract for the disposition not only of the money he may have as the result of his pension, but of all personal property of which he may be the owner?"

MR. TAWNEY:

"As applied to members of the soldiers homes who die in the homes without disposing of their property by will or otherwise, or *having no heirs.*"

MR. COX:

"But is it not made a matter prerequisite under the paragraph that before an individual can be admitted as an inmate, he must enter a contract bargaining away not only his pension, but his personal property?"

MR. TAWNEY:

"He is not bargaining it away at all. He is merely agreeing that in the event of his death while an inmate of the home, and in the event of his not disposing of the property himself, or of *his having no heirs,* rather than see his property and his money go to the state in which the home is located * * * * * it shall be disposed of for the benefit of his comrades."

MR. COX:

"Does the provision carry all of the personal property that the old soldier may die the owner of while he is an inmate of the institution?"

MR. TAWNEY:

"Certainly. It carries personal property, which includes, of course, any money which he may have on deposit; but it carries it to the home only in the event of his death in the home, *without heirs,* and without having disposed of his property before death."

MR. KEIFER:

" * * * * * I have no trouble about the purpose and propriety of having the estate of deceased members of the National Soldiers Home go to the benefit of their comrades if they die as members intestate and without heirs. But I think it is well for us to look and see whether we can accomplish that purpose by this provision. It is an attempt by federal law to provide a new mode of disposing of an estate without regard to state law. It is an attempt to make, in effect at least, a statute of descent. * * * I think that if the contract is of a proper character it may do this, otherwise I think this provision will merely lead to litigation. *The purpose of the bill is to cut off the right of the state to take the property that in legal effect escheats to the state.*"

(Discussion as to rights of creditors and consensus of opinion that home would only take what was left after all debts of pensioner were paid,—also as to sufficiency of contract and moral question as to whether the State or the institution is more entitled to the funds.)

MR. COX OF INDIANA:

"I do not believe we should offer the old soldiers the necessity to bargain away the pittance he has. My idea is that he should enter the home free and untrammeled."

MR. KEIFER:

"You say the soldier is required to bargain away his property in advance. I do not understand that there is anything of the kind in the provision. On the contrary, he is only *making a contract by which he keeps it from going to the state.*"

MR. COX:

"A man's property rights are absolute, sacred rights. I do not care if he has $5.00 or $5,000,000 worth of property, it is his."

MR. CULLAP:

"I will ask this question. Is it not fair to assume that under this provision any legatee legally entitled to the estate may come in after the death?"

MR. COX:

"That may be true. * * * * I am not clear, however, whether or not a soldier can make a will disposing of his estate after he enters the home. * * * * "

MR. KEIFER:

" * * * * I think the criticism that the soldier may be prevented from making a will by the provisions of the bill is not well taken. The bill allows a soldier at any time after he becomes a member of a home to make a will, and if he makes a will that disposes of his property even to a stranger, no matter whether it disposes of pension money or other property that belongs to him, *or if he dies and leaves anybody under the statutes of descent anywhere in the world to inherit it, then the provision in the bill (that the institution should take the property) could have no application.* The question simply is whether or not we can by proper provision in this bill provide that the soldier shall or can bind himself to allow his estate after his death to go to a post fund of the home in which he is an inmate for the benefit of his surviving comrades in that home.

"I do not believe that we can change the statute of descent of any state, nor do I think we could prevent the estate of any deceased soldier under any contract from being administered upon by the laws of the state in which he was a resident at the time of his death. It would be only by such an appropriate provision as would give the post fund the right to claim it through administration. I was anxious to carry out the purpose

of the provision, so that the old veteran soldier might have the consolation, *if he had no blood kin or relative anywhere in the world to inherit his personal estate, and if he did not exercise the right * * * to dispose of his property by will,* of knowing that when he died and left any personal property, however small, it would go to the comfort of other veteran soldiers who were inmates of the home of which he died a member."

(Italics and also matters in parentheses ours.)

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No. 143

In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, PETITIONER

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

On a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENTS

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PRESS OF GEO. H. DEAN CO., BOSTON

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ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24-27) is reported in 15 F. Supp. 139. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is reported in 89 F. (2d) 151 (sub. nom. *Stevens* v. *United States*).

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. Petition for a writ of certiorari was filed June 15, 1937 (R. 28), and granted October 11, 1937 (R. 28). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the Act of June 25, 1910, c. 384, 36 Stat. 703, require an agreement by the applicant for admission to the National Home for Disabled Volunteer Soldiers that, on his death while a member, all his personal property shall vest in the Board of Managers of said "Home," irrespective of the fact that he leaves heirs or leaves a will; or did Congress intend to require an agreement that would vest in said Board of Managers only that property of said deceased member which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State?

STATUTE INVOLVED

The statute involved is set forth in Appendix A (infra p. 18).

STATEMENT

The agreed statement of facts (R. 11-15) may be summarized as follows:

One Thomas McGovern enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in the State of Virginia (which place is hereinafter referred to as the "Home"). On April 17, 1925, McGovern signed an application for admission to the "Home," based on the provisions of the Act of June 25, 1910, infra, Appendix A. This application (R. 13) contained the following provisions:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

In his application, McGovern stated he had a wife and four children, address unknown.

McGovern died September 17, 1928, while a member of the "Home," having lived therein for about two years and ten months. He was survived by his said wife, Anne J. McGovern, and his said four children: Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern (R. 11-12).

At the time of McGovern's admission to the "Home" and at the time of his death, his wife lived with his married daughter, Mrs. Stevens, and his unmarried daughter, Catherine E. McGovern, in

the City of Boston. The said Lena F. Donovan, at that time a married daughter of the decedent, lived with her husband at New Haven, Connecticut. The son, Robert E. McGovern, at that time was an insane person, having been committed as such by a Massachusetts Court in the year 1918, and confined at the Massachusetts State Hospital at Gardner, Massachusetts (R. 12).

McGovern had been a resident of the City of Chelsea, Suffolk County, Massachusetts, since 1889, and that City was his domicile at the time of his death (R. 12). McGovern and his wife and family lived together in Chelsea until the year 1904, when they parted, McGovern and the son residing in one part of Chelsea, and the mother and three daughters in another section of the same City, and from that time on, McGovern and his said family were never reunited. A few years after the McGoverns parted, a great conflagration visited the City of Chelsea, resulting in forcing Mrs. McGovern and her three daughters to take up their residence in the City of Boston, which City adjoins the City of Chelsea. In the course of time, two of the daughters became married women, and one of them, the respondent Lena F. Donovan, took up her residence with her husband in New Haven, Connecticut, and in 1918 the boy, Robert E. McGovern, who had been living with the decedent, his father, became insane (R. 12) and, from that time on, McGovern lived alone in the City of Chelsea, until he entered the "Home."

The said widow and children, above named, were, at the time of McGovern's death, his only heirs at law and next of kin and the only persons entitled, under the laws of Massachusetts, to receive his per-

sonal estate if he died intestate (R. 12). No one in behalf of the "Home" nor any agent of the government made any attempt to locate the said widow and children at the time of McGovern's death or at any time subsequent thereto (R. 12). The said widow, Anne J. McGovern, died March 4, 1933, almost four and one-half years after the death of her husband, never having learned of it (R. 12).

At the time of his death, McGovern had a deposit in the savings department of the Chelsea Trust Company, of Chelsea in said County of Suffolk, amounting to over $3,800 (R. 12) and a deposit in the Boston Five Cents Savings Bank, of Boston in said County of Suffolk, amounting to $1980 (R. 12).

It was over seven years before the first knowledge of the death of the decedent was received by any of his said heirs at law and next of kin (R. 12). Shortly after the receipt of the notice of his death, the respondent Helen J. Stevens, was duly appointed administratrix of the estate of Thomas McGovern by the Probate Court for the said County of Suffolk (R. 12). Immediately after the said appointment, the administratrix brought a bill in equity in the said Probate Court, praying for the determination of the ownership of the bank deposits above described (R. 5). No part of the money and other personal property owned by the decedent at the time of his death was derived from the United States Government in the form of a pension or otherwise (R. 12).

A guardian was duly appointed to represent Robert E. McGovern, the insane son of the decedent.

On April 10, 1936, the petitioner brought a proceeding against the Chelsea Trust Company, the administratrix, and all the children of McGovern including the insane person, because the Bank refused to pay over to the petitioner on demand the amount of the deposit to the credit of the account registered in the name of the decedent (R. 1-3). The administratrix and all the children of the decedent denied the application of the statute to the particular facts (R. 4-10).

On June 5, 1936, the District Court entered judgment for the petitioner (R. 15) and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting (R. 22-27).

SUMMARY OF ARGUMENT

I

No title vested in the Board of Managers at McGovern's death. He had a wife and four children living at his death. Therefore there could be no escheat. The purpose of the Act was to prevent an escheat to the State. The reclamation period, which is common to escheat, applies to unknown heirs and undiscovered wills. Known heirs are not compelled to reclaim.

II

No constitutional question is involved if the Act and the contract made pursuant thereto be properly construed.

ARGUMENT

I

The contract in McGovern's application for membership in the "Home" did not, at his death, vest his personal property in the Board of Managers of the "Home" (or its successor) because he left heirs at law and next of kin, to wit: a wife and four children.

The contract based on the Act can be no higher than the Act itself. By the Act, Congress empowered a government agency in charge of the management of The National Home for Disabled Volunteer Soldiers, to change the form of application for membership so that a contract would be embodied in the same between the applicant and the "Home" in respect to the disposition of the applicant's personal estate if he died while a member of the "Home," intestate, leaving no heirs at law or next of kin.

Prior to the passage of the Act involved in this case, a substantial number of inmates of the branches of The National Home located in various parts of the country, had died intestate, leaving no heirs at law nor next of kin. The bank deposits standing in the names of these decedents, in the various localities, taken collectively, amounted in some instances to $30,000, and that money was subject to the escheat laws of several states. See Appendix B (infra pp. 19-25).

To remedy this situation and to divert such funds to the use of the surviving members of the "Home," Congress passed the Act now before the Court. The purpose of the Act was to prevent the escheat to the States by means of an agreement in the members' application for membership. The Act did not

change the usual conditions for admission; that is the status of the applicant as an honorably discharged soldier and disability. As heretofore, it was immaterial whether the applicant entered the "Home" with money or without it. The whole intent and purpose of Congress was to prevent an escheat and to restrict the disposition of the property of the applicant at his death only in the event that he left no heirs or next of kin, and left no will.

The Act authorizes a contract to defeat an escheat to the State; the Board of Managers of the "Home" are to be substituted for the State. Obviously, the Board of Managers will take no title unless there are circumstances parallel to an escheat; that is, intestacy without heirs or next of kin.

There are not two agreements in the application for membership. The Act provides for one contract, and it is not divisible. The application based on the Act must be likewise. The authorized agreement is that, if McGovern died while a member of the "Home," leaving no heirs at law or next of kin, all his personal property not disposed of by will, should vest in and become the property of the Board of Managers of the "Home" for the benefit of the post fund. The Act did not authorize an agreement that McGovern's estate, in any event, would vest in the Board of Managers, irrespective of heirs or a will. These respondents maintain that the words

> ". . . . and that all personal property of said applicant shall, upon his death while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member,"

refer to the member dying intestate without heirs or next of kin.

Provisions for the reclamation of property by heirs are common in escheat laws, and these provisions follow after a determination of the question of whether or not a man leaves heirs or next of kin capable of inheriting. For instance, in Massachusetts, after proceedings have been had and no heirs found, the undiscovered heirs still have six years from the date of the transfer of the funds to the State Treasurer, in which to reclaim. See Mass. G. L. Ter. Ed. c. 194, s. 14, 15.

Reclamation, however, has no application where there is no escheat, because the heirs are at hand, and they take the property. The lack of a provision in the Act for notice is understandable in the respondents' construction of the Act because the presence of heirs or the fact of a will relieves the necessity for notice.

Congress knew that the estate of a deceased member of the "Home" would be probated in accordance with the laws of the state where the deceased member had his domicile. These proceedings would settle the fact of heirship or testacy. The Board of Managers would have no other way to determine whether the deceased member left heirs at law or next of kin, or left a will disposing of his property. There must be probate to determine the heirs; there must be probate for the allowance of the instrument alleged to be a will. Obviously, a department of the government could not determine these matters.

There is a positive disagreement between the petitioner and these respondents as to the con-

struction of the Act. We therefore seek the aid of legislative intent to construe the Act. The intent of Congress is found in a discussion recorded in Cong. Rec., Vol. 45, part 7, pp. 7011-13, 7101, see Appendix B (infra pp. 19-25). This discussion shows conclusively that the intent of the proponents of this legislation is to pass an Act which would affect only the personal property of an applicant who died a member of the "Home," leaving no heirs at law or next of kin, and not making any disposition of his property by will. Statutes must be construed to effectuate the legislative intent.

The contention of these respondents is upheld by language contained in the case of *National Home* v. *Wood*, 299 U. S. 211, p. 215, where this Court said:

> "The Act directs the disposition of personal property left by members dying intestate and without heirs. Congress intended to vest in the board of managers for the post fund only that which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State."

II

There is no need to find the statute unconstitutional if it is construed properly. The Circuit Court found the statute unconstitutional because it adopted the petitioner's construction. By the petitioner's construction of the statute, McGovern's property, on his death, vested immediately in the Board of Managers. The Circuit Court said this means that Congress was legislating concerning the devolution of the personal property of a deceased member, none of which was pension money or derived from the government.

This construction of the statute seemingly sets up a process for the devolution of a member's property at his death because the property vests in the Board of Managers, subject to be divested by a claim made by an heir or legatee within the five-year period following the death. Under this construction, who will determine whether or not there are heirs and whether or not the instrument called a will is a legal will? Presumably the Board of Managers. In other words, probate questions will be settled in the office of the Board of Managers and not by any court, although the statute speaks of heirs and legatees and a will, which indicates strongly that the Legislature had in mind the probate of the estate of the deceased member.

The common law rule, that the personal property of a deceased person vests in the executor or administrator, prevails in Massachusetts. See *Lawrence* v. *Wright,* 23 Pick. 128, where Shaw, C. J., speaking for the Court, says, at p. 129:

> "The personal property of a deceased person vests in the executor or administrator; and when an administrator is appointed, the appointment relates back and vests the property in him from the decease of the intestate. Those who have the property in custody in the mean time, have no further power over or interest in it, than is necessary to enable them to keep it safely and have it forthcoming, when called for by the administrator."

McGovern died domiciled in Massachusetts, intestate, leaving a widow and four children, and under the laws of Massachusetts, they were the persons entitled to receive the distributive estate, one-

third to the widow, the remaining two-thirds equally among the surviving children. Mass. G. L. Ter. Ed. c. 190, secs. 1, 2 and 3.

The petitioners contend the laws of Massachusetts in respect to the descent of personal estate do not affect McGovern's agreement with the "Home." The majority of the Circuit Court believed otherwise. They apparently did not believe the contract contained in McGovern's application for admission to the "Home" was one of those numerous contracts "to dispose of one's property in a specified way at one's death," the Court having in mind that the usual contract of that nature is plainly a matter of bargaining. It is a business deal. The parties are dealing at arm's length. One party to the contract has property that he is willing to have pass to the other party provided the other party performs the act required of him by the owner of the property. In these contracts, there is never the question of whether or not the decedent left heirs or next of kin or whether or not he left a will. The lower Court must have viewed the contract now before the Court as one between an old disabled volunteer soldier and his country. There was no bargaining. McGovern was entitled to enter the "Home" because of his service in the Army and because of his disability.

The "Home," from its creation, has been supported by appropriations from Congress, and an applicant who met all the other requirements was welcome to admission, whether or not he had property. All the "Home" wanted from the applicant was an agreement that, if his property was to escheat to a State, he, the applicant, would pass it to

the "Home" for the benefit of the post fund, a not very burdensome condition and one that would be met gladly by any reasonable applicant.

From the foregoing, it is not difficult to see what led the Court below to declare the statute unconstitutional because Congress had, by this statute, violated the reserved rights of the States under the Tenth Amendment to the Constitution.

The majority of the Circuit Court also inferred that the statute, to be effective, should have contained a provision for notice *"so that the heirs or next of kin would at least have an opportunity to assert a claim of reclamation within the period of five years limited by the statute; and that in no event should they be deprived of their rights in the estate of a deceased member without notice and an opportunity to assert a claim."*

The lower Court undoubtedly made this inference because it likened the situation now before us to a case where there is an escheat and where no title vests in the State without a judicial determination of heirs.

If McGovern's property was to escheat to the State of Massachusetts, there would have to be a determination of heirs. See *Wilbur* v. *Tobey,* 16 Pick. 177, 180, where the Court, speaking through Shaw, C. J., says:

> "Where a subject dies intestate, as the estate descends to collateral kindred indefinitely, the presumption of the law is that he had heirs, and this presumption will be good against the Commonwealth until it institutes the regular proceedings by inquest of office, by which the fact, whether the intestate did or did not die without heirs, can be ascertained, and if this

fact is established in favor of the Commonwealth, it rebuts the contrary presumption, and the Commonwealth by force of the judgment, and of the statute before cited, becomes seized in law and in fact. In such a case, therefore, the Court are of opinion that an inquest of office is necessary, and that the Commonwealth cannot be deemed to be seized without such inquest. So far as this depends upon general principles, it seems to be a rule highly reasonable in itself and tends greatly to the security and regularity of titles. By the mode of taking inquests, prescribed by the laws of this Commonwealth . . . *general notice is to be given of the claim of the Commonwealth, any person is admitted to traverse it,* a trial by jury is to be had, and costs are given to the prevailing party. These are highly reasonable and equitable provisions, and it is manifestly for the quiet of the Commonwealth and the security of the citizen, that they should be pursued, before the Commonwealth shall be permitted to take into its own custody and dispose of assets upon a claim which, if not doubtful, is at least not apparent." (Italics ours)

The principle, as set forth above by Chief Justice Shaw, has been approved by this Court in *Hamilton* v. *Brown,* 161 U. S. 256, a case involving the law of escheat in Texas, which case has been followed in *Christianson* v. *County of King,* 239 U. S. 356, a case involving the escheat law of the Territory of Washington, wherein the Court, speaking through Hughes, J., said, at p. 373:

"It was competent for the Court to inquire whether there were heirs, and if there were such, to determine who are entitled to take, according to the order prescribed by the statute,

and also, if it was found that there were no heirs, to make the distribution to the county as the Statute required. *It is apparent that there was no deprivation of property without due process of law. The Court, after appropriate notice, did determine that there were no heirs and its decree being the act of a competent jurisdiction under a valid statute bound all the world including the plaintiff in error.*" (Italics ours)

It is hard to believe that the Legislature, in the Act of June 25, 1910, would deprive the heirs of McGovern of the safeguards that would protect them if there had been an escheat to the Commonwealth of Massachusetts. If the statute substitutes the Board of Managers for the Commonwealth of Massachusetts in case of an escheat, are not the Board of Managers, by implication, required to have a determination of heirs in order to foreclose the rights of heirs, within the time limited by the statute? The statute is an escheat in intent, if not by express language, and does not this imply notice? Clearly, if the Commonwealth of Massachusetts had done what the Board of Managers have done in this case, there would have been a deprivation of property without due process of law.

If we adopt the petitioner's construction of the statute involved in this case, we confront a situation where one of the heirs was insane before the admission of his father to the "Home" and, in fact, at the time of his father's death, and was never legally capable of asserting a claim in the period of reclamation limited by the statute. It is hardly likely that the Legislature intended this situation, and of course this situation is not met if you adopt

the construction put on the statute by these respondents for, in that case, every heir under a disability would be protected by an administrator or an executor who would act in behalf of those heirs who could not act for themselves.

These respondents maintain that the decision of this Court in the Wood case, 299 U. S. 211, does not prevent the Court now from deciding that the statute is unconstitutional if we adopt the construction put on the same by the petitioner: that, on the death of a member, all his property immediately vests in the Board of Managers, irrespective of whether or not he left heirs or a will.

We do not question the power of Congress to legislate in respect to pension money derived from the United States. The congressional debates (See Appendix B, infra pp. 19-25) make clear that the main purpose of Congress was to have a contract in relation to the member's own property; that the inclusion of the pension money was incidental to the main purpose of the statute. The whole situation in respect to this statute rebuts the presumption against its severability because the part of the statute referring to pension money is bound to be good, while that part of the statute in reference to the member's own estate, has a doubtful taint, until this Court has passed on the statute.

A statute bad in part is not necessarily void in its entirety. Good provisions within the legislative power, may stand if separable from the bad. *Dorchy* v. *Kansas*, 264 U. S. 286, 289.

Accordingly, from the construction put on the statute by the petitioner, a constitutional issue is raised with some force. These respondents, how-

ever, still maintain that no constitutional question is involved if the statute and the contract made pursuant thereto, be properly construed.

CONCLUSION

For the reasons heretofore stated, it is respectfully submitted that the decision by the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

JAMES E. CARROLL,

Attorney for the Respondents, Helen J. Stevens, Administratrix, and the Heirs of Thomas McGovern.

APPENDIX A

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

APPENDIX B

Discussion by Congressional Committee upon May 27 and May 28, 1910, concerning Act of June 25, 1910, C. 384, 36 Stat. 736, Sec. 136, Title 24, U. S. C., found in Vol. 45, Part 7, pp. 7011-13, 7101 of the Congressional Records. (61st Congress, 2nd Session.)

MR. TAWNEY:

"The reason for this provision is this—and I trust I may have the attention of the Committee, because this is a matter of considerable importance. At all of the homes there are a great many soldiers die, leaving on deposit in the banks of the city in which the home is located a certain amount of money. Now, if they die intestate and without heirs that money remains in the bank. Instances have occurred where men have fraudulently taken out letters of administration for the purpose of getting the money on deposit belonging to the soldier at the time of his death. At the Dayton Home in Ohio there is in the banks today over $30,000 unclaimed by relatives or heirs or legatees.

"That fund is increasing, and the committee had information to the effect that the State of Ohio, proceeding under the law of escheat, was about to bring suit against the managers of the banks to recover that money for the benefit of the State. There is in the neighborhood of $30,000 on deposit in the banks of Milwaukee, and there are large sums of money on deposit, unclaimed, in the banks of the cities where all of the other homes are located. Now: Proceeding upon the theory that *where the old soldier dies without heirs or legatees,* he would rather

that money which he leaves behind should be paid into the post fund for the benefit and comfort of his old comrades rather than allow it to go back to the State, of which he might not even be a citizen, because these men who are in the home are not always citizens of the State in which the home is located; for that reason we have provided here, or we have incorporated this provision, so that in every case where the old soldier dies and leaves money on deposit, or other property undisposed of by will and unclaimed by legatees or heirs, that money shall be used for the benefit of his comrades and not go back to the State under the law of escheat.

"That is the reason for it, and that is all this provision accomplished; and in order to make it legal this provision provides expressly that the form of application be so changed that every old soldier who applies for admission to one of these homes, in making out his application, is notified of this fact and his consent to the disposition of his money and property at the time of his death is obtained. In no other way can we change the law of descent in the States. I do not think there is a member of this House who can justly complain of or criticise the provision. It is in the interest of the old soldiers remaining here after their comrade has died without disposition of his property, that in that event his property, whatever it may consist of, may be deposited for the benefit of those old soldiers who are occupants of these homes."

MR. COX:

"I notice that the paragraph provides that the application shall constitute a binding and valid contract between the applicant and the

Board of Managers, not only for the money that the soldier may have as a result of his pension, or the pension he may have remaining at the time of his death, but for all of his personal property. 'Is this proper legislation?' "

MR. TAWNEY:

"Now, the gentleman from Indiana is a lawyer, and a good lawyer, and he knows that is not the effect of this provision. I will say the provision was drawn by Judge Smith after the most careful consideration, taking into account the fact that in all of the States there is provision made for the settlement of estates belonging to deceased citizens. This provision would call to the attention of the applicant and it would be notice to him that if he had no heirs, which of course he would know, or if he had not made a will disposing of his property, he would have notice of the fact and could arrange to dispose of his property by will."

MR. COX:

"Am I right in construing the provision to mean that the application of the applicant seeking admission to the institution and his admission constitutes a binding contract for the disposition not only of the money he may have as the result of his pension, but of all personal property of which he may be the owner?"

MR. TAWNEY:

"As applied to members of the soldiers homes who die in the homes without disposing of their property by will or otherwise, or *having no heirs.*"

MR. COX:

"But is it not made a matter prerequisite under the paragraph that before an individual can be admitted as an inmate, he must enter a contract bargaining away not only his pension, but his personal property?"

MR. TAWNEY:

"He is not bargaining it away at all. He is merely agreeing that in the event of his death while an inmate of the home, and in the event of his not disposing of the property himself, or of *his having no heirs,* rather than see his property and his money go to the state in which the home is located * * * * * it shall be disposed of for the benefit of his comrades."

MR. COX:

"Does the provision carry all of the personal property that the old soldier may die the owner of while he is an inmate of the institution?"

MR. TAWNEY:

"Certainly. It carries personal property, which includes, of course, any money which he may have on deposit; but it carries it to the home only in the event of his death in the home, *without heirs,* and without having disposed of his property before death."

MR. KEIFER:

" * * * * * I have no trouble about the purpose and propriety of having the estate of deceased members of the National Soldiers Home go to the benefit of their comrades if they die as members intestate and without heirs. But I think it is well for us to look and see whether we can accomplish that purpose by this provision. It is an attempt by federal law to

provide a new mode of disposing of an estate without regard to state law. It is an attempt to make, in effect at least, a statute of descent. * * * I think that if the contract is of a proper character it may do this, otherwise I think this provision will merely lead to litigation. *The purpose of the bill is to cut off the right of the state to take the property that in legal effect escheats to the state.*"

(Discussion as to rights of creditors and consensus of opinion that home would only take what was left after all debts of pensioner were paid,—also as to sufficiency of contract and moral question as to whether the State or the institution is more entitled to the funds.)

MR. COX OF INDIANA.:

"I do not believe we should offer the old soldiers the necessity to bargain away the pittance he has. My idea is that he should enter the home free and untrammeled."

MR. KEIFER:

"You say the soldier is required to bargain away his property in advance. I do not understand that there is anything of the kind in the provision. On the contrary, he is only *making a contract by which he keeps it from going to the state.*"

MR. COX:

"A man's property rights are absolute, sacred rights. I do not care if he has $5.00 or $5,000,000 worth of property, it is his."

MR. CULLAP:

"I will ask this question. Is it not fair to assume that under this provision any legatee legally entitled to the estate may come in after the death?"

SUPREME COURT OF THE UNITED STATES.

No. 143.—October Term, 1937.

The United States of America, Petitioner, *vs.* Helen J. Stevens, Administratrix, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 17, 1938.]

Mr. Justice Black delivered the opinion of the Court.

Can the United States enforce a contract executed by an ex-soldier in order to obtain admission into the National Home for Disabled Volunteer Soldiers, which contract provides that upon the death of the veteran while a member of the Home, all his personal property shall pass to the Home subject to be reclaimed within five years by any legatee or person entitled to receive the property by inheritance?

The district court held the contract valid and enforceable.[1] The Court of Appeals reversed.[2]

The facts disclose that:

Thomas McGovern, a native of Ireland, served in the United States Army from 1877 to 1882; in 1904 his wife and three daughters left him, but a son, Robert, continued to live with McGovern until 1918 when the son (represented in this cause by a guardian) was committed to a state home for the insane; the complete severance of all family ties and associations continued until McGovern's death, and the wife and daughters, living most of the time in Boston, Massachusetts, were wholly unware of his whereabouts for the last twenty years of his life, most of which were spent in nearby Chelsea; under these circumstances, McGovern, age 72, in his application for admission to the Home, stated that the names and addresses of his wife and nearest relatives were unknown, and that he desired admission because he was "unable on account of his disability to earn his living"; a doctor's certificate showed that his mental condition was good, at the date of admission, but that he needed medical treatment and attention due to serious physical

[1] 15 Fed. Supp. 139.

[2] 89 F. (2d) 151; certiorari granted, — U. S. —.

weakness and ailments. His written agreement with the Home stated:

"The said Thomas McGovern hereby agrees that, in event of his death while a *member of the National Military Home* for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers *for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member;* . . ."

At the time of his admission into the Home, McGovern had savings deposits which were his personal property. September 17, 1928, while an inmate of the Home, he died intestate. His wife died in 1933 without knowledge of his death, and none of the daughters learned of his death until October 19, 1935. No claim to McGovern's property was filed with the Home within five years after his death.

In this action brought by the United States to require payment to the Home of funds of McGovern on deposit in a Massachusetts bank at his death, it is contended:

(1) that, because McGovern left surviving heirs, the title to his personal property did not pass to the Home;

(2) that the Act of June 25, 1910[3] authorizing the Home to make the contract with McGovern is invalid.

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[3] Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

"Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each *applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.*"

1. There is no ambiguity in the contract or in the Act which authorized it. No words in the contract indicate that the personal property should pass to the Home only in the absence of persons entitled to take by law. On the contrary, both the contract and the Act evince a clear intent that the personal property of the veteran, when not claimed by heirs or legatees *within five years after the veteran's death*, should pass to the Home to be used to provide comforts and entertainment for its inmates. "The measure (the Act of 1910) leaves the member free to dispose by will and safeguards to the legatees and heirs the right *within five years* to reclaim 'all the property' that belonged to him at the time of his death. As to that, there is no ambiguity and therefore nothing to construe." *National Home* v. *Wood*, 299 U. S. 216.

2. The Court of Appeals was of the opinion that the Act of Congress authorizing the contract was void as an interference with the reserved rights of the state of the veteran's legal domicile when he died (Massachusetts) in that "it was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will."

This contract, however, is valid under the applicable state law.[4] The Supreme Court of Massachusetts in 1931 in the case of *Hale* v. *Wilmarth*, 274 Mass. 189, said, "The statute of wills, . . . does not prevent an owner of property from stipulating by contract for the disposition of his property at the time of his death."[5]

During the life of the veteran, his property was his own to dispose of as he desired; his was an "intent to make a more binding and irrevocable provision than a legacy could be"[6] and a stipulation for notice to his heirs of the fact of his death was not required to make the provision valid. "Not until the ancestor dies is there any vested right in the heir." *Jefferson* v. *Fink*, 247 U. S. 294.

In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, consistently with state law, can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by

[4] "Contracts respecting the disposition of one's property after death, are not uncommon." Murphy v. Murphy, 217 Mass. 236.

[5] See, also, Holyoke National Bank v. Bailey, 273 Mass. 551; Ex Parte Simons, 247 U. S. 239.

[6] Krell v. Codman, 154 Mass. 458.

them, generally receive some benefit from any property or estates of their members.[7]

When McGovern entered this home he was aged, without family ties, lonely and physically incapacitated. There he received care, food, shelter and companionship. He would have been privileged to remain in the Home even though, after admittance, he had chosen to make the members of his family the recipients of the money, by gift, by will, or by notifying them to claim his property after his death.

The claim of the Government is based on a contract between the veteran and the Home. Nothing in the record indicates that the agreement was not fairly and voluntarily entered into between the parties, or that it was inequitable, unjust or not upon valuable consideration. Both parties were competent to make the contract. This contract is valid and enforceable, and since no claim was made by heirs or legatees within five years after his death, the veteran's personal property passed to the Home for the benefit of its inmates. The decree of the Court of Appeals is not in harmony with these views and is

Reversed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[7] See United States v. Bowen, 100 U. S. 508 (Cf. St. Benedict Order v. Steinhauser, 234 U. S. 640). See Digest of Poor Relief Laws of the Several States and Territories as of May 1, 1936, prepared by Robert C. Lowe and Staff, Legal Research Section, under the supervision of A. Ross Eckler, Coordinator of Special Inquiries, Division of Social Research, Works Progress Administration.